

Exhibit A

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al.,) 5) 6 Plaintiffs,) 7 vs.) Case No. 8) 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et al.,) 11) 12 Defendants.) 13 14 15 16 17 VIDEOTAPED DEPOSITION OF JUSTIN CARVER 18 TAKEN ON BEHALF OF THE PLAINTIFFS 19 DECEMBER 11th, 2017 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al.,) 5) 6 Plaintiffs,) 7 vs.) Case No. 8) 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et al.,) 11) 12 Defendants.) 13 14 15 VIDEOTAPED DEPOSITION OF JUSTIN CARVER, 16 produced, sworn, and examined on the 11th day of 17 December, 2017, between the hours of nine o'clock in 18 the morning and four o'clock in the afternoon of that 19 date at the law offices of ALARIS LITIGATION SERVICES, 20 2511 Broadway Bluffs, Suite 201, Columbia, Missouri 21 65201, before LISA BALLALATAK, a Certified Court 22 Reporter within and for the State of Missouri, in a 23 certain cause now pending IN THE UNITED STATES 24 DISTRICT COURT, WESTERN DISTRICT OF MISSOURI, CENTRAL 25 DIVISION, wherein SHONDEL CHURCH, et al. are the Plaintiffs and STATE OF MISSOURI, et al. are the Defendants.</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX OF EXAMINATION 2 3 Examination by Mr. Scherzer 7 4 Cross-Examination by Mr. Ramsey 191 5 Cross-Examination by Ms. Shipma 233 6 Redirect Examination by Mr. Scherzer 240 7 8 INDEX OF EXHIBITS 9 EXHIBITS: 10 Exhibit No. 17 (Case Conference Transcript) 13 11 Exhibit No. 18 (12/29/16 E-mail String) 89 12 Exhibit No. 19 (October '17 E-mail String) 133 13 Exhibit No. 20 (Rule 4-5.1) 141 14 Exhibit No. 21 (Budget Request) 142 15 Exhibit No. 22 (Senate Committee Report) 147 16 Exhibit No. 23 (Representation Motion) 153 17 Exhibit No. 24 (Motion Re: Conference) 156 18 Exhibit No. 25 (Suggestions Attachment) 157 19 Exhibit No. 26 (Williams Conference) 171 20 Exhibit No. 27 (Administrative Office E-mails) 180 21 Reporter's Note: The original exhibits were attached 22 to the original transcript. 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES 2 For the Plaintiffs: 3 MR. AARON SCHERZER 4 ORRICK, HERRINGTON & SUTCLIFFE, LLP 5 51 West 52nd Street 6 New York, New York 10019 7 (212) 506-5000 8 ascherzer@orrick.com 9 10 MR. ANTHONY TARTAGLIO 11 ORRICK, HERRINGTON & SUTCLIFFE, LLP 12 1000 Marsh Road 13 Menlo Park, California 94025 14 (650) 614-7478 15 ttartaglio@orrick.com 16 17 For the Defendants MSPD System: 18 MS. JACQUELINE D. SHIPMA 19 MISSOURI STATE PUBLIC DEFENDER SYSTEM 20 1000 W Nifong Boulevard, Suite 100 21 Columbia, Missouri 65203 22 573-777-9977 23 24 For The State of Missouri and 25 Governor Greitens: MR. STEVEN ALAN RAMSEY ASSISTANT ATTORNEY GENERAL MISSOURI ATTORNEY GENERAL'S OFFICE P. O. Box 899 221 West High Street Jefferson City, Missouri 65101 (573) 751-2590 steven.ramsey@ago.mo.gov Also present: Mr. Chris Tobin, Videographer The Court Reporter: MS. LISA BALLALATAK, CCR</p>

<p style="text-align: right;">Page 5</p> <p>1 (The deposition commenced at 8:59 a.m.) 2 VIDEOGRAPHER: We're on the record. 3 Today's date is December 12th, 2017, and the time is 4 8:59 a.m. This is the video-recorded deposition of 5 Justin Carver in the matter of Shondel Church, et 6 al. v. State of Missouri, et al., Case No. 7 1704057-CV-C-NKL in the United States District Court 8 for the Western District of Missouri, Central 9 Division. This deposition is being held at Alaris 10 Litigation Services at 2511 Broadway Bluffs Drive, 11 Columbia, Missouri. The court reporter's name is 12 Lisa Ballalatak. My name is Chris Tobin. I'm the 13 legal videographer, and we are with 14 Alaris Litigation Services. 15 Would the attorneys present please state 16 their names for the record. 17 MR. SCHERZER: Aaron Scherzer for the 18 plaintiffs. 19 MR. TARTAGLIO: Anthony Tartaglio, also 20 for plaintiffs. 21 MR. RAMSEY: Steven Alan Ramsey for the 22 State of Missouri and Governor Greitens. 23 MS. SHIPMA: Jacqueline Shipma for the 24 MSPD defendants. 25 VIDEOGRAPHER: Would the court reporter</p>	<p style="text-align: right;">Page 7</p> <p>1 My understanding is that the reason that I was 2 sought to be deposed was I could testify to 3 limitations that she might have had as a result of, 4 you know, kind of the injuries in the accident. 5 Q. Got it. And you haven't been deposed in 6 your role at the MSPD, though? 7 A. Correct. 8 Q. Have you testified in any other cases at 9 trial? 10 A. I don't believe I've testified at trial. 11 I've certainly testified in court a number of times. 12 Q. Got it. And we'll get to that later. I'm 13 aware of one particular instance we'll certainly 14 talk about later. 15 A. Okay. 16 Q. And have you taken depositions yourself? 17 A. Yes. 18 Q. Okay. About approximately how many? 19 A. No idea. More than I can count on my 20 fingers and toes. 21 Q. Got it. So more than ten or 20? 22 A. Yes. 23 Q. Okay. So then you're very familiar with 24 how this works. I'm going to ask you questions 25 relevant to the case. You're required to answer</p>
<p style="text-align: right;">Page 6</p> <p>1 please swear in the witness. 2 JUSTIN CARVER, 3 of lawful age, being produced, sworn, and examined on 4 behalf of the Plaintiffs deposes and says: 5 EXAMINATION 6 BY MR. SCHERZER: 7 Q. Good morning, Mr. Carver. 8 A. Good morning. 9 Q. My name is Aaron Scherzer, and, as you 10 know, I represent the plaintiffs in this case. How 11 are you doing? 12 A. Fine. Thank you. 13 Q. Other than when we just met in the 14 hallway, have we met previously? 15 A. Not to my knowledge. 16 Q. Okay. Have you ever been deposed before? 17 A. Yes. 18 Q. And how many times? 19 A. Just once. 20 Q. And what kind of case was that? 21 A. It was a civil case in the late 1990s in 22 the city of Chicago. I was dating a gal who had 23 been -- who had a major, like, jaw reconstructive 24 surgery, was afterwards injured in a vehicle 25 accident, all of which occurred before I knew her.</p>	<p style="text-align: right;">Page 8</p> <p>1 truthfully and to the best of your ability. 2 Remember, obviously, that you're here under oath. 3 Does that all -- 4 A. I understand. 5 Q. -- make sense? Okay. 6 A. Yes, sir. 7 Q. As you know, there's a court reporter here 8 transcribing the deposition, so just for ease of the 9 record, and, obviously, there's video as well, 10 please wait until I finish the question, if you can, 11 and -- before you answer, and if you have any 12 questions about my questions, don't hesitate to make 13 that clear. If you need to take a break, obviously, 14 feel free to do so; I just ask that you try to 15 answer the pending question before you do so. 16 A. Understand. 17 Q. Your attorney might object -- Ms. Shipma 18 might object. Unless, of course, she instructs you 19 not to answer, you should still go ahead and answer 20 the question. Does that make sense? 21 A. Yes. 22 Q. Okay. And, of course, if you need a break 23 at -- like I said, at any time, just let me know, 24 and we can take one. 25 Okay. So how did you prepare for this</p>

2 (Pages 5 to 8)

1 deposition?

2 A. I met with Ms. Shipma, and I reviewed the

3 data from my office, in terms of cases -- how many

4 cases did we open, how many cases do we have open

5 now.

6 Q. Okay. And when -- for how long did you

7 meet with Ms. Shipma?

8 A. About two hours.

9 Q. Okay. And you said you reviewed data.

10 What -- in what form were those --

11 A. Electronic.

12 Q. Electronic data. Okay. Did you review

13 any other documents?

14 A. After I had received the notice of

15 depositions and before I met with Ms. Shipma, I

16 reviewed items that I had submitted to Ms. Shipma

17 that I understand were disclosed to the parties as a

18 part of the discovery process.

19 Q. Got it. Any items in particular that you

20 recall that you reviewed?

21 A. There was an e-mail thread that was

22 initially an e-mail that I sent to the court late

23 December of 2016 with a couple of responses. There

24 were -- there was a motion for caseload conference.

25 There's a transcript in relationship to that. There

1 was a motion to decline representation. There may

2 have been something else. I can't remember. Those

3 are the items that come to my mind.

4 Q. That's very helpful. And did those

5 documents refresh your recollection about what's

6 transpired?

7 A. Yes.

8 Q. And when you say "electronic data," just

9 to return to that, can you just tell me more about

10 that?

11 A. Sure. All of our case work is conducted

12 in software called Lotus Notes. It's a case

13 management database -- or system, and, you know,

14 within that, say, client Joe Blow, certainly, he'll

15 have all of the pleadings associated with this case,

16 court dates, memos of the case, file action items to

17 the investigator. So there's that -- specific

18 case-related items with regard to specific clients,

19 but then there are also views that I can access that

20 will tell me how many cases does this lawyer have

21 open now? How many cases did we open last year?

22 How many cases did we close last year? There are --

23 you know, probably guesstimate, two dozen different

24 views that I can access to slice down our case data

25 more specifically. How many per venue, by case

1 type.

2 Q. Got it. And does all of that data pertain

3 to your district or is it statewide?

4 A. Purely my district.

5 Q. Okay.

6 A. There are -- there's kind of a wall setup

7 so that I cannot access data for another district.

8 Q. Got it.

9 A. But I can access my district only.

10 Q. And your understanding is that each

11 district defender has access to the data for his or

12 her district?

13 A. Correct.

14 Q. Do other attorneys in your office have

15 access to that data or just the district defender?

16 A. Everybody in my office has access to the

17 same data.

18 Q. Got it. Okay.

19 A. Well -- if I can qualify that.

20 Q. Sure.

21 A. There are certain management views that I

22 can see kind of over and above case data that

23 employees would not be able to access, personnel

24 records, things of that kind. But purely in terms

25 of the case data, what I have access to is what my

1 employees have access to.

2 Q. And --

3 A. Does that make sense?

4 Q. Yes.

5 A. Okay.

6 Q. And is it your understanding that that

7 data, then, is transmitted to the central office

8 from time to time or daily or ...

9 A. My understanding is that the central

10 office has access to all of it at any given point in

11 time.

12 Q. Okay.

13 A. Well, I say that -- some people within the

14 central office have access to it at any given point

15 in time. For example, my supervisor -- my direct

16 supervisor is Ellen Blau. I understand that she is

17 able to access the data from my office for the

18 Columbia trial office for all of the other offices

19 that she supervises. There may be people in our

20 administrative office who don't have access to that

21 information because they don't need it.

22 Q. Got it.

23 A. Does that make sense?

24 Q. Yes. Perfect. Thank you. In terms of

25 the documents that you reviewed, did you bring any

<p style="text-align: right;">Page 13</p> <p>1 of those documents or any other documents with you</p> <p>2 here today?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. I want to turn -- I'll just do this</p> <p>5 slightly out of order, given the documents that</p> <p>6 we're discussing. I want to turn to what I'm going</p> <p>7 to mark as Plaintiff's Exhibit 17.</p> <p>8 (Deposition Exhibit No. 17 was marked for</p> <p>9 identification.)</p> <p>10 Q. (By Mr. Scherzer) I'll give you a chance</p> <p>11 to just glance at it. Obviously, not read the whole</p> <p>12 thing, since it's 60 pages.</p> <p>13 A. Yes. I'm with you. Thank you.</p> <p>14 Q. Okay. Do you recognize this document?</p> <p>15 A. I do.</p> <p>16 Q. And what is it?</p> <p>17 A. This is the transcript of a -- sort of a</p> <p>18 part 1 of a case conference hearing that was held in</p> <p>19 Cole County in November 2017.</p> <p>20 Q. Okay. And do you see the date on the</p> <p>21 middle of the first page?</p> <p>22 A. I do. It says November 7.</p> <p>23 Q. And the case name is State of Missouri v.</p> <p>24 Quentin Williams; is that right?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 15</p> <p>1 a second?</p> <p>2 MR. SCHERZER: Sure.</p> <p>3 VIDEOGRAPHER: The time is 9:11 a.m.</p> <p>4 We're off the record.</p> <p>5 (Discussion off the record.)</p> <p>6 VIDEOGRAPHER: The time is 9:13 a.m., and</p> <p>7 we're back on the record.</p> <p>8 Q. (By Mr. Scherzer) Okay. Mr. Carver, by</p> <p>9 who are you employed?</p> <p>10 A. The State of Missouri. Specifically, the</p> <p>11 Missouri State Public Defender System.</p> <p>12 Q. And what's your current title?</p> <p>13 A. District defender of Area 19.</p> <p>14 Q. And how long have you been in that</p> <p>15 position?</p> <p>16 A. Since the end of September 2014.</p> <p>17 Q. Okay. And prior to that, did you serve</p> <p>18 with the MSPD in another capacity?</p> <p>19 A. I did. I was the district defender in the</p> <p>20 Fulton office, which I think was Area 12, and I was</p> <p>21 the district defender there -- I started as an</p> <p>22 assistant public defender in Fulton in 2002 --</p> <p>23 either in 2005 or 2006 -- I can't remember -- I was</p> <p>24 promoted to district defender, and so from that --</p> <p>25 2005 to 2006, up until 2014, I was the district</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. And do you see the judge on the top of the</p> <p>2 page?</p> <p>3 A. Yes, sir. Judge Joyce.</p> <p>4 Q. Okay. So I want to get much more into</p> <p>5 detail on this later on -- and, obviously, I haven't</p> <p>6 asked you background questions first, but I'm asking</p> <p>7 you about this now for the following reason. Can</p> <p>8 you turn to page 8- -- see the Bates page numbers on</p> <p>9 the bottom, page 82. It's Bates 4.</p> <p>10 A. Yeah, I'm sorry. I was looking at the --</p> <p>11 82.</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. So you see there are a number of</p> <p>15 exhibits --</p> <p>16 A. Yes?</p> <p>17 Q. -- affidavits and caseload printouts.</p> <p>18 A. Yes.</p> <p>19 Q. Do you -- I'm asking you about this early</p> <p>20 on in the deposition on the chance that --</p> <p>21 obviously, you don't have it with you. Would</p> <p>22 someone in your office be able to get this -- these</p> <p>23 documents before the end of the day, by chance,</p> <p>24 or -- if not, it's fine.</p> <p>25 MS. SHIPMA: Can we go off the record for</p>	<p style="text-align: right;">Page 16</p> <p>1 defender in Fulton.</p> <p>2 Q. Okay. And then in 2014, you switched and</p> <p>3 became district defender in Area 14?</p> <p>4 A. Nineteen.</p> <p>5 Q. Nineteen. Sorry.</p> <p>6 A. Yes, sir.</p> <p>7 Q. And why did you make that switch?</p> <p>8 A. The entire time I had been working in</p> <p>9 Fulton, I lived in Jefferson City and just drove to</p> <p>10 Fulton, and, you know, the vacancy came open in</p> <p>11 Jefferson City, and I took the anecdote [sic] of,</p> <p>12 you know, I could drive five minutes to the office</p> <p>13 or I could drive 30 minutes to the office. Driving</p> <p>14 five minutes to the office sounds great. So -- and,</p> <p>15 you know, as a practical matter, all of the time I</p> <p>16 had been working in Fulton, if the kid got sick at</p> <p>17 school, all of that fell on my wife. So for the</p> <p>18 family dynamic perspective, it would be more helpful</p> <p>19 to have me in Jefferson City.</p> <p>20 Q. Got it. And which counties are included</p> <p>21 in District 19?</p> <p>22 A. Cole County, Miller County, and Moniteau</p> <p>23 County.</p> <p>24 Q. Okay. And what does it mean to be a</p> <p>25 district defender?</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 A. It means that I am the supervisor in that 2 office and that I'm responsible for hiring, for 3 doing in-house training, for, you know, any employee 4 discipline issues. I deal with those in 5 coordination with our human resource office and with 6 general counsel. Invoices, budgets -- you know, 7 there are administrative components to the thing. 8 In addition to that, I'm a lawyer, and, you know, 9 the reality of our caseload situation is, I have to 10 carry a caseload, and so as part of that, I go to 11 court and do my best to work on my cases.</p> <p>12 Q. And you mentioned that you report to 13 Ellen Blau; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And what is her title? Do you know?</p> <p>16 A. I believe she is -- her official title is 17 the trial division director.</p> <p>18 Q. Okay. And she's located in the central 19 office?</p> <p>20 A. She -- she supervises the entire state, 21 and so commonly when I call her, she's in her car 22 driving, so -- I know that from time to time, she 23 does work out of the Columbia office. You know, 24 primarily, I think that there's an administrative 25 office in St. Louis -- or there's at least a desk</p>	<p style="text-align: right;">Page 19</p> <p>1 expectations for the lawyers that are not, like, 2 reduced to writing in some sort of formal document. 3 You know what I mean?</p> <p>4 Q. Uh-huh. So you communicate those verbally 5 with your line attorneys?</p> <p>6 A. Right. Right. Yeah.</p> <p>7 Q. Do you do that individually, or are there 8 team meetings?</p> <p>9 A. In a variety of formats. I mean, you 10 know -- for example, last week we had an office 11 meeting, and, you know, as a part of that, there's 12 sort of administrative issues that were coming up in 13 the context of Cole County, so I -- we talked about 14 what those issues were, and I gave the lawyers 15 several ways that they can handle the issue. But, 16 ultimately, I didn't mandate that they handle it in 17 any specific manner but gave them, you know, kind of 18 some -- Hey, these are the different ways that you 19 can deal with it. You know, deal with it one way or 20 another, but don't just ignore it.</p> <p>21 Q. Got it. Got it. Do you talk to most of 22 the line attorneys in your office every day?</p> <p>23 A. No. Part of that is -- you know, right 24 now my caseload is in Miller County, and so I 25 spend -- right now I'm spending a considerable</p>
<p style="text-align: right;">Page 18</p> <p>1 that she utilizes in St. Louis, but she spends a lot 2 of time on the road.</p> <p>3 Q. And you mentioned some of this previously, 4 but as the district defender, do you have 5 discretionary authority over some things that your 6 line attorneys don't have discretion over, in terms 7 of day-to-day management of the office?</p> <p>8 A. Are you talking about, like, you know, how 9 things work within the office and stuff like that?</p> <p>10 Q. Uh-huh. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. Are you familiar with the standard 13 litigation practices in your office?</p> <p>14 A. What do you mean?</p> <p>15 Q. Are you familiar with either -- with, say, 16 policies and procedures that you've set up or team 17 members in your office have set up for how your 18 office operates and how the line attorneys operate?</p> <p>19 A. We don't have, like, any sort of formal 20 policies or procedures that are Area 19 specific.</p> <p>21 Q. Okay.</p> <p>22 A. You know, there are -- the agency has sort 23 of standards and guidelines that all employees are 24 sort of directed to follow. I have my own, you 25 know, sort of supplementary or additional</p>	<p style="text-align: right;">Page 20</p> <p>1 amount of time outside of the office going to court 2 in Miller County, going to the Miller County jail, 3 and so there are lawyers who I may see once a week.</p> <p>4 Q. Got it. How many days a week do you 5 estimate you're spending in Miller County?</p> <p>6 A. Hmm. That's hard to say. I'm going to 7 say one or two, just for court. In addition, there 8 are other things that take me down there, jail 9 visits, things come up, I need to go, so ...</p> <p>10 Q. So with court and the jail visits, do you 11 think two or three days a week? Does that seem 12 right?</p> <p>13 A. Probably. But it -- you know, certainly, 14 it's going to vary.</p> <p>15 Q. It depends.</p> <p>16 A. There may be a week where I don't go there 17 at all, but then there may be other weeks where I 18 may be there four times, so -- right. But that's -- 19 two or three is probably a decent rough estimate.</p> <p>20 Q. Okay. Does your -- you mentioned the 21 Lotus Notes program for attorney workload.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Does your office gather statistics about 24 how many hours attorneys spend on various tasks, or 25 did it at any point?</p>

5 (Pages 17 to 20)

1 A. It did. For a considerable period of
2 time, every lawyer in the agency was required to log
3 their time in five-minute increments. And over --
4 sort of in the time that I've been with the agency,
5 there was a time where we started and we continued
6 it, and then it stopped. And then we started it
7 again, and it continued, and then it stopped. I
8 can't -- I can't recall, you know, when we started,
9 when we stopped; when we started, when we stopped.

10 **Q. Okay. And do you have any knowledge of**
11 **why you stopped this most recent time?**

12 A. What I was told by Director Barrett was
13 that we had been doing it long enough that we
14 accumulated, you know, a substantial body of data,
15 and if -- what he articulated was, he felt like we
16 have all of the data we need. You know, right now
17 additional data would not be beneficial, and logging
18 the time just gives the lawyers one more thing to
19 do, and, frankly, their time is short. Personally,
20 I was finding it would take me 20 minutes a day to
21 log all of my time, and when you're trying to
22 squeeze every hour out of every day, you know, if
23 you aggregate that, you know, 330 lawyers or
24 whatever we have, you know, 300 working days of the
25 year or whatever, that's a pretty good amount of

1 **yourself, handle?**

2 A. Off the top of my head, I couldn't tell
3 you how many cases a year. I did look at my
4 caseload yesterday, and I can tell you that as of
5 yesterday, I had 213 open cases.

6 **Q. Okay.**

7 A. And that would include everything from --
8 I had seven misdemeanor cases that were open, all
9 the way up to one murder case.

10 **Q. Got it.**

11 A. Predominantly, those are felony cases.
12 About 150 are felonies.

13 **Q. 150 felonies, and does that mean 63**
14 **misdemeanors, or is there some other category?**

15 A. Probation violation cases. Some of the
16 probation violation cases are probation violations
17 cases on felony charges. There are some misdemeanor
18 cases.

19 **Q. Okay. But you don't have in your head an**
20 **exact breakdown of the remaining 63 how many are**
21 **probation violations, how many are misdemeanors?**

22 A. I want to say about 30 to 35 of the 213
23 are probation violations.

24 **Q. Okay.**

25 A. As of yesterday, I had seven misdemeanor

1 productivity that's lost just typing in data that's
2 really not -- that we're really not getting anything
3 out of -- any additional benefit out of.

4 **Q. Since you'd already logged it for such a**
5 **long period --**

6 A. Correct.

7 **Q. Got it. And so, in other words, the --**
8 **your understanding of the rationale is that it was**
9 **taking time away from cases and representing**
10 **clients?**

11 A. Correct.

12 **Q. Okay. Okay. I'll move on away from the**
13 **background section, just to note that any remaining**
14 **questions that I ask, unless I indicate otherwise,**
15 **are about your district and -- rather than the state**
16 **as a whole. And by "your district," I mean,**
17 **obviously, District 19, not the Fulton office.**

18 A. Fair enough.

19 **Q. All right.**

20 A. Okay.

21 **Q. So you mentioned that in addition to all**
22 **of your responsibilities as district defender, you**
23 **also have your own caseload; is that right?**

24 A. Correct.

25 **Q. And about how many cases a year do you,**

1 cases.

2 **Q. All right.**

3 A. So now I'm trying to do math in my head
4 while we're talking.

5 **Q. Right.**

6 A. So I would say -- I said, you know, sort
7 of initially as a ballpark, 150 would be felony
8 cases. Trying to do the math, about 170, it sounds
9 like, is a better estimate of how many open felonies
10 I have right now.

11 **Q. And is that 213 that you have open as of**
12 **yesterday, is that atypical of what your caseload**
13 **has been in the last, say, three months, or does**
14 **that seem -- does your caseload seem about what it's**
15 **been for the past three months?**

16 A. A couple of months ago, about September or
17 October, somewhere in there, it had spiked up to
18 300, and so it's actually been -- it's been a little
19 bit higher, at least within this calendar year.
20 This calendar year has been a complete mess for my
21 office.

22 **Q. And when you say it spiked to 300 cases,**
23 **was that just for a one-month period or for longer?**

24 A. Yeah, about a month -- about a month, give
25 or take.

<p style="text-align: right;">Page 25</p> <p>1 Q. And what was the cause of that spike?</p> <p>2 A. We've had an unusual amount of turnover in</p> <p>3 the Area 19 office in calendar year 2017. We</p> <p>4 lost -- thus far this year, we've lost five lawyers.</p> <p>5 In -- you know, we've been hiring replacements as we</p> <p>6 go. One of the replacement lawyers that I hired,</p> <p>7 he's Army Reserves. We had him, you know, kind of</p> <p>8 on staff for two months, and then he got mobilized.</p> <p>9 And so as of July, he went out on military duty, and</p> <p>10 we're not expecting him back until July 2018.</p> <p>11 So -- and, frankly, even preceding</p> <p>12 January 2017, we had a lawyer go out on leave in</p> <p>13 September of 2016. So, I mean, effectively, we've</p> <p>14 been shorthanded at least one lawyer, sometimes two,</p> <p>15 since 2016, and so the turnover has substantially</p> <p>16 contributed to my caseload. The other thing that</p> <p>17 has contributed to my caseload is -- you know, we've</p> <p>18 sort of changed how we're doing things in Area 19</p> <p>19 in an attempt to manage the caseload of the</p> <p>20 assistant public defenders. And, you know, you note</p> <p>21 kind of through the documents that you received in</p> <p>22 discovery that the -- about the only plan that we</p> <p>23 could cook up was to communicate the situation to</p> <p>24 the courts, and if they were going to order the</p> <p>25 public defenders to represent, what I told the</p>	<p style="text-align: right;">Page 27</p> <p>1 defender offices in other parts of the state for</p> <p>2 family reasons. The lawyer that left in June, I</p> <p>3 believe it was, retired. He had a good number of</p> <p>4 years of service in and was eligible to retire, and</p> <p>5 he did. The lawyers that left more recently in</p> <p>6 August or September, one went to work for the</p> <p>7 attorney general's office, another went into private</p> <p>8 practice. Both -- in spite of the caseload controls</p> <p>9 that we implemented in January, both remained</p> <p>10 concerned about their caseload and didn't feel like</p> <p>11 they were practicing law the way they wanted to, had</p> <p>12 other opportunities, and took them.</p> <p>13 Q. Okay. And that -- do you talk to each of</p> <p>14 those attorneys -- did you talk to each of those</p> <p>15 attorneys before they left the office?</p> <p>16 A. Yes.</p> <p>17 Q. And is that the basis for your knowledge</p> <p>18 of why they left?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Are you concerned by this turnover?</p> <p>21 A. Oh, absolutely. Yeah. Absolutely. And</p> <p>22 the turnover -- you know, the turnover has been a</p> <p>23 problem with the agency as long as I've been around.</p> <p>24 And, you know, there's turnover that's just going to</p> <p>25 happen, that you really can't avoid, but there's</p>
<p style="text-align: right;">Page 26</p> <p>1 judges is, Look, if we're telling you we can't take</p> <p>2 any more cases and you put us in it anyway, I'm</p> <p>3 going to assign it to myself and not continue to</p> <p>4 assign cases to an assistant public defender who has</p> <p>5 already got too many. And so it -- that has been an</p> <p>6 additional factor in my caseload sort of spiraling</p> <p>7 in 2017.</p> <p>8 Q. Got it. And you said you had five</p> <p>9 attorneys leave in the past year. Do you mean in</p> <p>10 calendar year in 2017?</p> <p>11 A. Correct. Yes, sir.</p> <p>12 Q. And how many attorneys total --</p> <p>13 line attorneys, not counting yourself, does the</p> <p>14 office have?</p> <p>15 A. There's seven line attorneys not counting</p> <p>16 myself.</p> <p>17 Q. So five of the seven left within the past</p> <p>18 year?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Is that -- what was the basis for</p> <p>21 that turnover?</p> <p>22 A. A variety of reasons. The first two to</p> <p>23 leave in early 2017 both had babies, and Grandma and</p> <p>24 Grandpa lived in other parts of the state, and so</p> <p>25 they -- each of those lawyers transferred to public</p>	<p style="text-align: right;">Page 28</p> <p>1 turnover that absolutely is avoidable. And, you</p> <p>2 know, the most common reasons lawyers cite in</p> <p>3 leaving is either pay or caseload or both. And, you</p> <p>4 know, the problem is, is that there's so many --</p> <p>5 there's so many problems. You know, we --</p> <p>6 typically, the lawyers that come to the public</p> <p>7 defender's office are coming with little legal</p> <p>8 experience, because, frankly, we pay bottom dollar.</p> <p>9 You know, I've never had a senior partner at a major</p> <p>10 law firm apply for a job as a public defender.</p> <p>11 Likewise, I've never had a sitting circuit judge</p> <p>12 apply for a job as a public defender. It just -- I</p> <p>13 mean, it's not happened in the entire time I've been</p> <p>14 doing this, at least in my office. You know,</p> <p>15 typically, we get people who are looking for some</p> <p>16 experience. We spend a substantial amount of time</p> <p>17 and money training those lawyers to get them up to</p> <p>18 speed as quickly as possible. You know, when they</p> <p>19 leave and go on to private practice or go into other</p> <p>20 public service positions or what have you, you know,</p> <p>21 all of the investment in that lawyer is effectively</p> <p>22 lost. Also, that lawyer is going to leave behind a</p> <p>23 block of cases. Those have to get reassigned,</p> <p>24 typically, within the office, and that causes, then,</p> <p>25 for the lawyers that remain that are already</p>

7 (Pages 25 to 28)

1 struggling with their caseload, now we're giving
 2 them that many more cases. It causes a significant
 3 interruption in the representation, in terms of the
 4 client relationship.

5 You know, right now we've got clients who
 6 are on their fourth or fifth lawyer. And, you know,
 7 from -- you know, frankly, if it were my kid who
 8 kept getting a new lawyer every two or three months
 9 and the lawyer says, Look, hey, give me some time;
 10 I've got to get up to speed. You know, I'll look at
 11 the thing, I'll come talk to your child in jail, and
 12 they get up to speed, and they go talk to the child
 13 in jail, and then they leave, and then the case gets
 14 reassigned -- I mean, if that had been my child, I
 15 would be furious. And we see that happening, like,
 16 over and over and over again. You know, for -- a
 17 lot of our clients have distrust in the legal system
 18 and have distrust in public defenders, and so we
 19 kind of start with the -- you know, sort of with a
 20 credibility gap in the eyes of a lot of our
 21 clients anyway, and when they have that experience
 22 with the public defender's office, they don't have
 23 any faith in their representation.

24 You know, from an efficiency perspective,
 25 the new lawyer has to duplicate all of the work that

1 was done before. You know, the fact that the old
 2 lawyer read the police reports doesn't help the new
 3 lawyer; the new lawyer has got to read them all over
 4 again. You know, all the videos, they've got to
 5 watch them all over again. Got to go meet with the
 6 client, talk to them all over again. So there's a
 7 significant inefficiency there.

8 You know, we've had clients who end up
 9 saying, To heck with it; I'll just cut a deal with
 10 the prosecutor and go to prison pro se. I mean, the
 11 turnover is -- it creates significant issues, sort
 12 of in a number of different areas. And I spend a
 13 ton of time hiring, just -- so ...

14 **Q. Because you're responsible for the hiring
 15 for the district office?**

16 A. Correct.

17 **Q. Okay. And that's something you need to do
 18 on top of all of your other responsibilities?**

19 A. Right.

20 **Q. Okay. And when you say -- you said the
 21 two primary reasons, based on what these folks are
 22 telling you for why they leave, is pay and caseload;
 23 is that right?**

24 A. Correct.

25 **Q. And I assume that means low pay and high**

1 **caseload?**

2 A. Right.

3 **Q. And you said that your office pays bottom
 4 dollar. Are you -- first of all, is the salary for,
 5 say, a -- you know, a first-year, lowest level
 6 assistant public defender, is that the same across
 7 the state, or does it vary office by office?**

8 A. Same statewide.

9 **Q. Okay. And do you know what that rate is?**

10 A. \$39,000 a year and change.

11 **Q. Okay. And the -- do you know what the
 12 rate is for even the most senior assistant public
 13 defender?**

14 A. I want to say -- and I'm just going off
 15 memory. This is a ballpark. About 64, 65,000.

16 **Q. Okay.**

17 A. And under our existing sort of structure,
 18 you know, once they hit that amount, there's no room
 19 for advancement, unless they go into management or,
 20 like, the death penalty division or the commitment
 21 defense unit.

22 **Q. Okay. So someone could be an attorney for
 23 30 years and still be making --**

24 A. They could have tried a hundred murder
 25 cases, and we'll still pay them \$65,000 a year or

1 whatever it is.

2 **Q. Okay. And then the other thing that you
 3 mentioned was that some individual defendants could
 4 have four or five lawyers during the course of the
 5 case. I understand how that is, but just for the
 6 record, could you explain how that is that that
 7 happens based on the turnover?**

8 A. Absolutely. So say the client, Bob, is
 9 assigned Public Defender No. 1, and Public Defender
 10 No. 1 then quits. I'm going to hire a replacement
 11 for Public Defender No. 1 and try to find a new
 12 lawyer within the office for Client Bob. Client Bob
 13 now gets Public Defender 2, whoever that is -- maybe
 14 it's the new person; maybe it's somebody else. If
 15 No. 2 quits, I got to do it all over again. And so
 16 on and so forth.

17 The other thing that happens is -- at
 18 least in the Area 19 office, you know, we try to
 19 assign our cases geographically, in that we've got
 20 one lawyer that does Moniteau County. Right now the
 21 only lawyer getting new Miller County cases is me,
 22 and everybody else is getting new cases out of
 23 Cole County. And that's an efficiency thing. You
 24 know, from a client-relationship perspective, you
 25 know, it would be better if Bob had one lawyer in

<p style="text-align: right;">Page 33</p> <p>1 Cole, Miller, and Moniteau, in the event that Bob 2 had cases in all three. But, frankly, we're just 3 not able to do that because of the volume of cases 4 that we've brought. So if Bob's got charges in all 5 three counties, Bob is going to have three different 6 public defenders from my office. If two lawyers in 7 Cole County quit, for example, I will seek to hire 8 replacements, but at that point, the question of 9 which lawyer goes to what county is going to be up 10 for grabs, and I may take a lawyer out of Moniteau 11 County, put them in Cole County, and then place the 12 new person in Moniteau County.</p> <p>13 It's sort of -- frankly, it depends on a 14 million and one different things, but every now and 15 then, we have to move a lawyer from one jurisdiction 16 to another, and that, then, can interrupt -- I mean, 17 that just -- that will cause an interruption in the 18 relationships for the clients whose lawyer quit, but 19 it's also, then, going to interrupt the cases in 20 which the lawyer was sort of pulled out and 21 transferred back in.</p> <p>22 Does that make sense?</p> <p>23 Q. No, that makes sense.</p> <p>24 A. Okay. Fair enough. I'm not sure if I 25 explained that very well.</p>	<p style="text-align: right;">Page 35</p> <p>1 triple-booked on a regular basis, in that I've got 2 to be in Moniteau County at nine o'clock and I've 3 got to be in Cole County at nine o'clock, for 4 example.</p> <p>5 Q. Got it. And when someone leaves your 6 office, is their position filled right away?</p> <p>7 A. Filled as quickly as I can do anything, 8 but right away, no. I mean, it may take -- you 9 know, understand when a lawyer leaves -- hopefully, 10 we get 30 days' notice. That's what we ask for. 11 Generally -- generally, lawyers have been good about 12 giving it. You know, when -- so I've got to -- as 13 soon as I receive a notice, the first thing I do is 14 request permission to post that vacancy, which, 15 generally, is approved right away. The position 16 will get posted the following Wednesday. We leave 17 it open for two weeks to allow all applicants to 18 apply, and then we start the interview process. 19 And, you know, realistically, as a practical matter, 20 I never have the replacement on board, you know, 21 at -- on the -- on or by the lawyer that's leaving, 22 on or by the next day. Generally, we'll go a couple 23 of weeks or a month before the replacement starts. 24 Sometimes that's because they have to move and 25 relocate; sometimes that's because it takes me</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. No, no.</p> <p>2 A. Okay.</p> <p>3 Q. And have you either received directly or 4 heard about complaints from individual defendants, 5 when they -- or their family, when they have re- -- 6 have four or five different attorneys that -- from 7 your office that have been on their cases during the 8 pendency of the case?</p> <p>9 A. Absolutely. Yes.</p> <p>10 Q. Okay. And just in -- all right. Well, 11 I'll scratch that. I'll move on.</p> <p>12 And when someone leaves -- I'm sorry. To 13 go back to what you were saying, about how you 14 divide up based on geography. You said that's for 15 efficiency sake. Can you just explain for the 16 record why that is?</p> <p>17 A. Sure. The lawyers and myself spend a 18 considerable amount of time in court, and the court 19 dockets -- the judges in county -- in Cole County, 20 for example, don't coordinate their dockets with 21 themselves very well. They definitely don't 22 coordinate their dockets with judges in 23 Miller County and Moniteau County. And if I 24 assigned cases by client instead of by county, the 25 lawyer would find themselves double- and</p>	<p style="text-align: right;">Page 36</p> <p>1 forever to finish the hiring process. Sometimes 2 that's -- you know, it could be a variety of 3 reasons.</p> <p>4 Q. Okay. And during that time -- in between 5 when an attorney has left and when you've hired 6 their replacement, your office is obviously 7 short-staffed; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. And who picks up the cases from the 10 attorney who has left in that interim period?</p> <p>11 A. Well, prior to January 1, 2017, we would 12 reassign the cases internally as best as we could. 13 As of January 1, 2017, we sort of changed that. 14 What we would do is assign out those cases, to the 15 extent that we could, without making -- without 16 having the individual lawyers take more cases than 17 they could. Invariably, there was always a gap of 18 cases that we could not reassign internally, and on 19 those cases, we would file a motion to decline 20 representation or a motion for caseload conference 21 or whatever.</p> <p>22 Q. Okay. And I'll certainly get into much 23 more detail on that --</p> <p>24 A. Sure.</p> <p>25 Q. -- later on. And even just given the</p>

1 logistical delays in posting, do -- putting that
2 aside, do you sometimes have difficulty finding
3 someone to take the position?

4 A. Absolutely. Yes. Especially this year.
5 Hiring has gotten much more difficult within the
6 public defender's office. The applicant pools are
7 shrinking and the applicants within the pool is less
8 than what it had been in years past.

9 **Q. And you said hiring within the public
10 defender's office. Do you mean your office or
11 statewide or both?**

12 A. Well, that's been my experience in my
13 office, and in talking to other district defenders
14 in other offices, that's what they tell me too.

15 **Q. Got it. And when someone applies, are
16 they applying to Area or District 19, or are they
17 applying to the MSPD system overall?**

18 A. Whichever they like. So on our
19 application for employment, on the bottom of the
20 first page, the applicant is given the opportunity
21 to check geographic regions of preference. So they
22 could check Jefferson City, Columbia, St. Louis,
23 Kansas City, or they could check all, or if they
24 want to go work in West Plains, they could just
25 check the West Plains box. So, I mean, it's sort of

1 office?

2 A. That's my impression.

3 **Q. And you said within -- this has gotten
4 much worse within the past year; is that right? In
5 terms of recruiting?**

6 A. Yes. Absolutely.

7 **Q. Okay.**

8 A. Yeah. I mean, it's kind of funny, you
9 know, like, back in 2008, when the economy, you
10 know, completely fell apart, I remember hiring in
11 those times, and everybody wanted to be a public
12 defender. You know, we'd get a hundred applicants
13 for a position, even in Fulton, you know?

14 **Q. Uh-huh.**

15 A. And now the economy has certainly turned
16 around, and, you know, sort of as -- as this year
17 has unfolded and the public defender struggles have
18 sort of become more known in the community, you
19 know, I -- I had fewer applicants for the position
20 that we just filled than the ones that we had
21 even -- even, say, like, in January of this year --
22 of 2017, so ...

23 **Q. Got it.**

24 A. And there's not been -- in my opinion,
25 there has not been, like, a huge economic swing in

1 up to the applicant. And it's my understanding that
2 HR will forward that application to the offices
3 within the geographic preference that are hiring,
4 you know, within the period of time relevant to the
5 application.

6 **Q. And you mentioned there's often difficulty
7 finding applicants and qualified applicants. Do you
8 have a sense of why that is?**

9 A. Well -- yes. I mean, pay, caseload. The
10 legal market has certainly turned around since, you
11 know, the crash in 2008 or whenever it was, and my
12 impression is that the public defender's office is
13 not the pick of most graduates right now. And, you
14 know, there's been a lot of adverse publicity about
15 the public defender's office. You know, I mean,
16 it's sort of in the media that we're declining
17 cases, that we're all overwhelmed, that -- you know,
18 the Hinkebein decision certainly caused quite a
19 stir. So it's an agency that's not getting a lot of
20 positives out there in the community right now.

21 **Q. And so to clarify, it's -- the same
22 reasons that cause -- many of the same reasons that
23 cause your attorneys to leave -- low pay, high
24 caseload -- are the same reasons that you have
25 difficulty recruiting new folks to come to the**

1 those intervening months.

2 **Q. Okay. So I want to go back to some basic
3 questions about your office.**

4 A. Uh-huh.

5 **Q. So you have seven attorneys in the office,
6 although one of them is on leave in the Army
7 Reserves; is that right?**

8 A. Correct.

9 **Q. Okay. And you mentioned that there's
10 another -- there was another individual who was on
11 leave, but is that individual back or ...**

12 A. In September of 2016, one of my lawyers
13 went on leave, was scheduled to return in January of
14 2017. Instead of returning to my office, he
15 actually ended up transferring to another office,
16 and so he left my office.

17 **Q. Okay.**

18 A. That's one of the lawyers that ended up
19 leaving.

20 **Q. Got it. Okay. So you currently have six
21 line attorneys plus yourself in the office?**

22 A. Correct.

23 **Q. With -- plus this individual who is on
24 leave in the Army Reserves?**

25 A. Correct. Tangentially, my investigator

1 has been on leave.

2 **Q. Got it. And how many of those -- you**

3 **mentioned already that you handle felony cases. How**

4 **many of those six line attorneys handle felony**

5 **cases?**

6 A. All of them.

7 **Q. Okay. And how many of them handle**

8 **misdemeanors?**

9 A. I believe all of them do.

10 **Q. How many of those attorneys handle**

11 **juvenile cases?**

12 A. Just one.

13 **Q. Does that attorney handle only juvenile**

14 **cases or ...**

15 A. No. Also handles a regular mix of

16 felonies, misdemeanors, probation violations. When

17 I say "regular mix," not serious felonies, though.

18 That lawyer has been practicing -- she passed the

19 February bar, joined us in about June.

20 **Q. Okay. And so she then picked --**

21 **immediately picked up all of the juvenile cases that**

22 **were in the office or ...**

23 A. Right. But, typically, we've got two to

24 three open at any given point in time.

25 **Q. Okay. And that's two or three cases in**

1 **all three -- some in all three counties?**

2 A. Generally, the juvenile cases that we get

3 are in Miller County only. In Cole County, we do

4 not receive a single juvenile case, and the reason

5 for that is that the county actually has a contract

6 with some private lawyers where they pay the private

7 lawyer, you know, like, a reduced rate, and the

8 private lawyer will represent an indigent juvenile.

9 And so as a result, we get zero juvenile cases in

10 Cole County.

11 **Q. And when you say "contract with a private**

12 **lawyer," are those private lawyers who are at law**

13 **firms or ...**

14 A. Yes. Yes.

15 **Q. And are those private lawyers who do**

16 **solely juvenile cases, or it's a mix of -- it's part**

17 **of their caseload?**

18 A. Generally, it's a mix of whatever. You

19 know, like -- they'll do some family, they'll do

20 some criminal, maybe they'll do a little bit of

21 civil stuff, and then some juvenile appointments.

22 **Q. I'm sorry. When I -- my question earlier**

23 **wasn't clear. When I said that -- I mean, are these**

24 **individuals at medium-sized law firms in**

25 **Jefferson City, or are they solo practitioners at**

1 **smaller law firms?**

2 A. So the one I can think of -- I think he's

3 a solo now. Another one that I can think of is a

4 partner in a firm, but it's a -- you know, it's

5 Jeff City, like, every firm is kind of small, you

6 know what I mean? You know, I would be surprised if

7 the entire firm had five lawyers. Like, I -- I

8 don't think that they have that many people.

9 **Q. Okay. And just to tie up this juvenile**

10 **piece, when you said there -- there are two or three**

11 **cases at any given time in Miller County --**

12 A. Correct.

13 **Q. -- is that -- is your sense that that's**

14 **the total number of juvenile cases in Miller County**

15 **at any time, or is someone else receiving some of**

16 **those cases?**

17 A. My sense is that there are probably a

18 bunch of other cases out there that we're not seeing

19 and we're not getting.

20 **Q. Okay.**

21 A. And, likewise, in Moniteau County, I can't

22 think of the juvenile case that we've had out there.

23 Maybe we've had one. Surely at some point they've

24 detained a juvenile. I have no idea what, if any,

25 counsel that juvenile had.

1 **Q. Okay.**

2 A. And, you know, even in the Cole County

3 world where, you know -- I had a case in Cole County

4 where a 16-year-old had been certified, and I did

5 not do the certification because it was, you know,

6 the appointed lawyer, and the certification hearing

7 was not well done.

8 **Q. Okay. So just speaking about**

9 **Moniteau County, you're not aware of who, if anyone,**

10 **is representing the juveniles in that county?**

11 A. Correct.

12 **Q. Okay.**

13 A. I mean, certainly, if a juvenile applied

14 for public defender services and they qualified, we

15 would represent them. I don't recall having

16 received any Moniteau juvenile cases.

17 **Q. And when you say that, you mean since the**

18 **time that you took over the district defender**

19 **position in 2014?**

20 A. Correct.

21 **Q. Okay.**

22 A. I mean, there may be one or two out there.

23 I'd have to go back and look, but I can't think of a

24 name or a charge or a face or even the memory of the

25 existence of one of them.

<p style="text-align: right;">Page 45</p> <p>1 Q. Okay. Other than yourself, how long has 2 the most experienced attorney in your office been 3 practicing? 4 A. The most experienced attorney started 5 practicing approximately 2010. And then after that, 6 the next most experienced attorney has been 7 practicing a little over three years. 8 Q. Okay. And how long has the least 9 experienced attorney in your office been practicing? 10 A. He started practicing November 13th. 11 Q. Okay. So less than a month? 12 A. Correct. 13 Q. And is that attorney carrying felony 14 cases? 15 A. Yes. 16 Q. Okay. Do you -- I'm not holding you to an 17 exact number, but do you have an estimate of how 18 many cases that attorney is handling? 19 A. He's got about 70 cases open right now. I 20 couldn't tell you off the top of my head how many 21 are felonies or misdemeanors or probation 22 violations. 23 Q. And are those primarily cases -- new cases 24 that were opened within the past month or cases that 25 he took over from someone else in your office?</p>	<p style="text-align: right;">Page 47</p> <p>1 first week of practicing anywhere as a lawyer? 2 A. Correct. 3 Q. Okay. And then in the next two or three 4 weeks, since it's only been three or four weeks, he 5 received an additional 20 cases? 6 A. Correct. 7 Q. And you have said you're not aware of the 8 exact number of felony cases, which is certainly 9 fine. Do you know if he's receiving -- if he has 10 any cases that are A, B felonies, or is it just -- 11 A. He does have one. And I think it was a 12 situation where he had been assigned the client on a 13 misdemeanor or C and D felony, and then an A or B 14 drug case arose after he had already entered on 15 behalf of the client and did something to engage in 16 the representation. For continuity purposes, we 17 made the decision to assign him to A and B drug 18 case, too. 19 Q. Are you aware of any other A and B case 20 that he has? 21 A. No. 22 Q. Are you concerned about the fact that this 23 brand new attorney has 70 open cases within his 24 first three and a half weeks in the office? 25 A. Including some felonies?</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Typically, the bulk of them -- say, 50 -- 2 were cases that had been sort of -- that he took 3 over from somebody else who had left or were ones 4 that came in after somebody left and we filed a 5 motion on but then were able to open up when he 6 started. I would say approximately 20 were, like, 7 brand-spanking-new cases that came in after he 8 started. 9 Q. So those 50 cases -- going to the 50 cases 10 that were already existing in your office, how long 11 after he started did he pick up those -- did he pick 12 up all those 50 -- sorry. Scratch that. 13 Did he pick up all of those 50 cases at 14 once? 15 A. Yes. 16 Q. Okay. And how long after he started did 17 he pick up those cases? 18 A. We started assigning him cases out of 19 those 50 the very first day. And it probably took a 20 few days for staff to click all of the buttons and 21 make -- you know, do all of the stuff that we have 22 to do to transfer a file, but, effectively, within 23 the first week, he had received all of those 50 24 cases. 25 Q. Okay. And, again, this is within his</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Yes. 2 A. And an A or B drug felony that could 3 incarcerate his client for up to 15 years in prison? 4 Yeah. Absolutely. And, you know, I've got another 5 lawyer -- the lawyer who has three-plus years of 6 experience, and she's got 120 cases. I've got 213. 7 I mean, we're doing the best we can to keep brand 8 new lawyer's caseload down. I'm concerned about his 9 caseload situation. I'm concerned about everybody's 10 caseload situation. And that's about the best that 11 we can do at this particular moment to keep his 12 caseload down. I certainly don't want it to grow 13 any larger. I would like him to have more time 14 under his belt learning how to practice law, but, as 15 I mentioned, things are a mess right now, so ... 16 Q. Right. So I take it, obviously, if you -- 17 if you could, you would give him -- you would give 18 him many fewer cases to start; is that fair? 19 A. Yes. Yes. 20 Q. Okay. But the reason -- you started to 21 say this, but just -- if you could explain the 22 reason you can't do so is because everyone in your 23 office is overloaded; is that right? 24 A. Everybody is -- I don't believe that 25 there's a single lawyer in my office right now who</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 can take more cases. And, you know, all year we've 2 been filing motions to decline representation or a 3 motion to appoint -- we filed motions to appoint a 4 state lawyer who is employed by the Public Service 5 Commission or Department of Revenue or motions to 6 withdraw based on our caseload or motions for 7 caseload conference, and we've received a lot of 8 sympathy and a lot of moral support. And, you know, 9 there are judges who are talking about doing 10 something and contemplating doing something, and at 11 this point, we haven't received significant caseload 12 relief. We've received some.</p> <p>13 Judge Joyce in Cole County told us, You're 14 not taking any more criminal nonsupport cases until 15 we can get some representation on these people 16 charged with A and B felony cases first. So for 17 months in Cole County we've not been representing 18 people in criminal nonsupport cases, some of which 19 are felonies.</p> <p>20 And, you know, there are other things -- 21 there are sort of smaller things that have been done 22 to try and help us. You know, frankly, it's sort of 23 like -- and I appreciate all of the help that we can 24 get, because I will take all of the help that I can 25 get. You know, you can take an ice cream scoop to</p>	<p style="text-align: right;">Page 51</p> <p>1 that one is ordered to pay can be dealt with in a 2 couple of different ways. One is in the form of a 3 contempt at proceeding. Alternatively, a person can 4 be charged with a crime of failing to pay child 5 support. There's a misdemeanor offense of failing 6 to pay child support and a felony offense of failing 7 to pay child support. If it's a civil contempt 8 proceeding, under Chapter 600, they're ineligible 9 for public defender services, even though they may 10 have a right to counsel. If it's a criminal 11 proceeding, provided that they meet the financial 12 criteria, they would be eligible for public defender 13 services, certainly; the right to counsel would 14 attach, but at least in Cole County right now, 15 there's sort of this informal administrative order 16 that's not written down on any piece of paper that's 17 basically a judge saying, You guys aren't doing any 18 more criminal nonsupport cases until I tell you 19 otherwise.</p> <p>20 Q. And what's the most severe penalty that 21 someone facing a criminal nonsupport case could 22 face?</p> <p>23 A. Four years in the department of 24 corrections, if they have no prior felony 25 convictions. If they have prior felony convictions,</p>
<p style="text-align: right;">Page 50</p> <p>1 the iceberg that sank the Titanic, and the ship is 2 still probably going to go down. It might go down 3 slower, I don't know, but that's kind of where we 4 are. I mean, the -- really, what it would take to 5 get our office caseload down to a rational level 6 would be very dramatic, and at this point in time, 7 at least in the legal communities that I run in, we 8 don't have anybody talking about -- or we don't have 9 anybody doing the dramatic relief that would be 10 necessary.</p> <p>11 Q. Okay.</p> <p>12 A. Interestingly, on the Cole County 13 nonsupport cases, effectively, those litigants are 14 forced to proceed pro se.</p> <p>15 VIDEOGRAPHER: Excuse me one moment.</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 VIDEOGRAPHER: Can you move your -- could 18 you move your tie over?</p> <p>19 THE WITNESS: It's hidden. I apologize.</p> <p>20 VIDEOGRAPHER: Yeah. No problem. No 21 problem. Thank you.</p> <p>22 THE WITNESS: You're welcome.</p> <p>23 Q. (By Mr. Scherzer) What is a criminal 24 nonsupport case?</p> <p>25 A. In Missouri, failing to pay child support</p>	<p style="text-align: right;">Page 52</p> <p>1 even if they're unrelated, it could carry up to 2 seven years in the department of corrections and a 3 fine or probation or a combination thereof.</p> <p>4 Q. And approximately how many criminal 5 nonsupport cases are there in Cole County?</p> <p>6 A. I don't know because we're not doing them 7 anymore. I mean -- and I'm not trying to be flip 8 about it or anything.</p> <p>9 Q. I understand.</p> <p>10 A. Off the top of my head, I can't tell you. 11 But, you know, commonly, the -- you know, typically, 12 in a criminal nonsupport case on a first offense, 13 typically, the state is not requesting and the court 14 is not inclined to place the person in prison. 15 Typically, the judge is going to place the person on 16 probation with the condition that they pay, and so 17 then there are, invariably, on some cases, probation 18 violations related to the person's alleged failure 19 to pay. If you were to combine the criminal 20 nonsupport charges plus the probation violations, 21 there would be a substantial number, but I cannot 22 give you an estimate off the top of my head.</p> <p>23 Q. Just to get a ballpark, during the -- do 24 you think there are more than 50 a year in 25 Cole County?</p>

13 (Pages 49 to 52)

<p style="text-align: right;">Page 53</p> <p>1 A. This is a wild ballpark -- and talking 2 only about ones in which my office -- you know, 3 which they requested and received a public defender. 4 Wild ballpark, I would say, in a year, there may be 5 50 cases that we would do. Some folks in those 6 cases are going to retain private counsel. And, you 7 know, sort of one of the limitations -- at least, 8 when I get a criminal nonsupport case, I can only 9 deal with the criminal side of the case; I can't do 10 anything on the family domestic relations side of 11 the case. So I cannot get in the family case and 12 request a modification of the child support amount, 13 for example, or an alteration of the custody 14 arrangement or any of the stuff, I can only deal 15 with the criminal nonsupport charge. I don't even 16 know if that was responsive to the question, but it 17 was tangential -- a lot of clients because of that, 18 if they can find a way to borrow some money from Mom 19 or whatever, may hire a lawyer on the private side 20 who can do both, kind of, dynamics of the case. 21 Q. Okay. So when you -- but your wild 22 ballpark -- I'm not holding you to this -- you think 23 there are 50 cases or there would be 50 cases in a 24 given year that would have gone to the public 25 defender --</p>	<p style="text-align: right;">Page 55</p> <p>1 the execution of the sentence and place the person 2 on probation, on a probation violation, the court 3 can't change that three-year sentence. The court 4 could either execute the three-year sentence, 5 continue the probation, continue the probation with 6 additional special conditions, continue the 7 probation with a period of shock detention in the 8 county jail, or there are a couple of other 9 sentencing statutes that the court could implement. 10 The court could place the person in the department 11 of corrections for 120 days, retain jurisdiction for 12 120 days, then consider releasing them on probation. 13 There are a couple of other squirrely sentencing 14 statutes such as that. 15 Q. Okay. But, in general, the -- is it 16 correct that individuals facing probation violations 17 on these criminal nonsupport charges could face up 18 to four or seven years, as you described previously? 19 A. Correct. 20 Q. Okay. Would it be possible for them to 21 face more than seven years on a probation violation 22 on a criminal nonsupport case? 23 A. If the imposition of the sentence had been 24 suspended on a criminal nonsupport case -- and is 25 going to be an exceeding rare sentence, but say the</p>
<p style="text-align: right;">Page 54</p> <p>1 A. Correct. 2 Q. -- that now aren't going to the public 3 defender? 4 A. Correct. Be it a criminal nonsupport 5 charge or a probation violation on a criminal 6 nonsupport charge. 7 Q. Got it. Because they're also not doing 8 their probation violations on the criminal 9 nonsupport charges? 10 A. Correct. 11 Q. And how much time could someone face, 12 maximum, on the probation violation on the criminal 13 nonsupport charge? 14 A. It depends on how the probation was set 15 up. If the imposition of the sentence were 16 suspended, the range of punishment on the probation 17 violation is the range of punishment on the 18 underlying charge. So say it's a felony criminal 19 nonsupport charge charged as a first felony offense; 20 the range of punishment would be one day to one year 21 in the county jail or two to four years in the 22 department of corrections or a fine or probation. 23 That would be the range of punishment on the 24 suspended position of the sentence. If the court 25 were to impose a prison sentence but then suspend</p>	<p style="text-align: right;">Page 56</p> <p>1 judge suspended the imposition of sentence on the 2 criminal nonsupport case, but the client had a 3 suspended execution of the sentence in another 4 county or a suspended imposition of sentence in 5 another county -- probation is revoked in the other 6 county, and a five-year sentence is executed in the 7 other county. On the probation violation on the 8 criminal nonsupport, if no sentence has been fixed, 9 if the court suspended the imposition of the 10 sentence, that court could take that four- or 11 seven-year sentence and run it consecutive to the 12 previously imposed sentence, such that four plus 13 five would be nine or seven plus five would be 12. 14 If the court had suspended the execution of the 15 sentence, whether it would be concurrent or 16 consecutive would be driven by what the judge said 17 at the time of sentencing, when the execution was 18 suspended. That is a pretty rare circumstance, but 19 that's the only thing that comes to mind, in terms 20 of whether the court could increase -- have a 21 consequence that carries bigger than seven years. 22 And in no event could -- I mean, the range of 23 punishment fixed by the legislature is up to four or 24 seven, if they're a persistent felony offender, and 25 so the judge can't change that; the only thing that</p>

14 (Pages 53 to 56)

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1 the judge could do would be to tack it on and run it
2 consecutive to something else.

3 **Q. Got it. And you said that typically in**
4 **these cases the defendant is -- first-time felony**
5 **offender wouldn't be necessarily facing prison time.**
6 **I assume when you meant "typically," you mean in the**
7 **cases that your office had taken previously; is that**
8 **right?**

9 A. Right. Yeah. I mean, usually -- and it's
10 been my experience on criminal nonsupport cases,
11 really, what the prosecutor wants is, they want the
12 person to pay. The prosecutor knows if the
13 prosecutor puts in them in prison, they're not going
14 to be able to pay, and so, typically, in most cases,
15 generally -- this is gross generalization, but, you
16 know, generally, what the state is going to seek to
17 do is request probation with the condition that the
18 person pay such that if down the road they don't
19 pay, then they're in danger of going to prison.

20 **Q. Got it. And to clarify, you -- your**
21 **office, then, isn't -- wouldn't represent them at**
22 **this point now, even on that probation violation --**

23 A. Correct.

24 **Q. -- that might occur?**

25 A. Correct.

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1 the prosecutor may be like, Look, we're not going to
2 do probation on this. And in another sort of more
3 rare instance, you know, if the accused wants to go
4 to trial, I've practiced in front of at least one
5 judge who would say, You know, look, never. Only
6 once did he say it on the record, I'm not inclined
7 to grant probation after trial. And so I -- in kind
8 of thinking back in time, I can think of one client
9 who went to trial on a criminal nonsupport charge.
10 The first trial resulted in a hung jury; second
11 trial, he was convicted, court imposed a four-year
12 prison sentence, and he went and served the time.

13 **Q. All right. And if an individual now in**
14 **Cole County wanted to exercise his or her right to**
15 **trial, and if they weren't able to afford a private**
16 **lawyer, your understanding is they would need to**
17 **represent themselves?**

18 A. Yes.

19 **Q. Okay.**

20 A. I -- if -- I specifically heard the judge
21 doing that docket tell someone, Look, you're not
22 getting an appointed lawyer. You can represent
23 yourself or you can hire someone. And that's me
24 paraphrasing his words, but those were the options
25 that that judge had laid out.

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1 **Q. Okay.**

2 A. Unless some judge somewhere tells me I'm
3 going to, that's kind of the standing order is, that
4 I'm to not.

5 **Q. And, obviously, you're not aware, since**
6 **your office now isn't representing, of what's**
7 **happening -- whether that practice of not seeking**
8 **prison time initially is still happening for those**
9 **who are now representing themselves pro se. Is**
10 **that --**

11 A. I don't have personal knowledge as to
12 whether that practice has changed. My -- I mean, if
13 I had to guess, I would say that it probably has
14 not, but I don't know.

15 **Q. Okay. Are you aware of criminal**
16 **nonsupport cases that your office had either**
17 **initially or probation violations of criminal**
18 **nonsupport cases where the individual was facing**
19 **time in prison?**

20 A. I can think of a couple of situations --
21 you know, one, if the person had a prior or prior
22 convictions for criminal nonsupport, you know,
23 then -- you know, if the prosecutor had been dealing
24 with this person for the last 15 years, and they've
25 consistently failed to pay on multiple cases, then

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1 **Q. And that was to an individual, as you**
2 **said, who was facing either four or perhaps seven**
3 **years in prison?**

4 A. Correct.

5 **Q. And did the -- did that judge explain the**
6 **reason for there not being a public defender**
7 **available to that individual?**

8 A. He's -- I've heard him explain it a couple
9 of different ways. I've heard him say, Well, the
10 public defenders say they're too busy, sort of in a
11 condescending type of manner, or the public
12 defenders just don't want to take your case or
13 the -- you know, but I've also heard him say
14 something to the effect of, you know, the public
15 defenders are not available for new cases. And,
16 again, that's me paraphrasing his words, but I've
17 heard him sort of explain that a couple of different
18 ways.

19 **Q. And so you've been in the courtroom,**
20 **obviously, when this has happened on at least some**
21 **of the occasions when this has happened?**

22 A. Correct.

23 **Q. Okay. And when did this -- I know it's**
24 **not a written policy. When did this practice in**
25 **Cole County of your office not taking criminal**

15 (Pages 57 to 60)

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<p style="text-align: right;">Page 61</p> <p>1 nonsupport cases begin?</p> <p>2 A. I'm going to say April or May. And the</p> <p>3 reason that that comes to my mind was, I recall</p> <p>4 sitting in Judge Joyce's courtroom next to a lawyer</p> <p>5 who left us in June, and that was when</p> <p>6 Judge Joyce -- she asked, What are you guys doing</p> <p>7 here? We said, We're here for the nonsupport. She</p> <p>8 said, Why are you doing nonsupport when we've got</p> <p>9 all of these people charged with, like, you know,</p> <p>10 real felonies, real crimes that we can't get public</p> <p>11 defender representation on? You guys aren't taking</p> <p>12 any more nonsupport cases. Because I know that that</p> <p>13 lawyer left us in about June. I want to say this</p> <p>14 was in April or May. And so the only way that we</p> <p>15 would have taken any additional nonsupport cases</p> <p>16 since then is if Judge Joyce or Judge Schollmeyer</p> <p>17 told us specifically, I'm now ordering you to take</p> <p>18 this one. But, generally, as a rule, we are not</p> <p>19 doing them.</p> <p>20 Q. And that was something, it sounds like,</p> <p>21 suggested and instituted by Judge Joyce?</p> <p>22 A. Correct.</p> <p>23 Q. And that was -- just to clarify, that was</p> <p>24 in response to concerns about the -- about the</p> <p>25 case -- Judge Joyce's concerns about the caseload</p>	<p style="text-align: right;">Page 63</p> <p>1 just looking for probation with the condition that</p> <p>2 you pay, or the judge may say, Hey, look, why don't</p> <p>3 you talk to the prosecutor, see if you guys can work</p> <p>4 something out. Or the judge will just ask the</p> <p>5 prosecutor in the court, Prosecutor, what's your</p> <p>6 recommendation? Well, we're looking for probation.</p> <p>7 And then that -- and then the accused decides to go</p> <p>8 forward on their own, is sort of how that generally</p> <p>9 unfolds.</p> <p>10 Was that responsive to your question?</p> <p>11 Q. Yes. And when you say "decides to go</p> <p>12 forward on their own," you mean decides if they</p> <p>13 can't afford an attorney, they don't have a choice,</p> <p>14 other than to go forward on their own; is that</p> <p>15 right?</p> <p>16 A. Right.</p> <p>17 Q. Okay. And you're mostly in court in</p> <p>18 Miller County; is that right?</p> <p>19 A. Yes. Yes.</p> <p>20 Q. Okay. So -- and this is happening in</p> <p>21 Cole County?</p> <p>22 A. Yes.</p> <p>23 Q. But you can recall several instances, even</p> <p>24 in the limited time that you're in Cole County</p> <p>25 court, where you've witnessed an individual in a</p>
<p style="text-align: right;">Page 62</p> <p>1 overload in your office?</p> <p>2 A. Well -- yes. So it was an overload thing</p> <p>3 and it was -- you know, we were filing motions to</p> <p>4 decline representation or to appoint counsel on --</p> <p>5 even serious cases, A and B felonies. There were</p> <p>6 people in jail at that point who we filed these</p> <p>7 motions on. And, you know, the -- kind of the</p> <p>8 response of most of our Cole County judges was they</p> <p>9 said, Well, we're neither going to grant or deny the</p> <p>10 motion; we're just going to continue it out and hope</p> <p>11 that your staffing situation resolves.</p> <p>12 So there were all of these cases that</p> <p>13 floated for months and months and months and months,</p> <p>14 and we weren't entering, but yet then judge saw us,</p> <p>15 you know, on this nonsupport docket on cases that we</p> <p>16 had already entered in, and judge told us, Yeah,</p> <p>17 you're not -- no more of those, so ...</p> <p>18 Q. Okay. And in the times that you've been</p> <p>19 in the courtroom, which sounds like several times,</p> <p>20 do you recall what -- when a defendant is told he or</p> <p>21 she doesn't have access to the public defender in</p> <p>22 this criminal nonsupport case, what they've said in</p> <p>23 response?</p> <p>24 A. A lot of times the prosecutor will go up</p> <p>25 to them and talk to them and say, Hey, look, I'm</p>	<p style="text-align: right;">Page 64</p> <p>1 criminal nonsupport being told that they don't have</p> <p>2 access to a public defender; is that right?</p> <p>3 A. Correct. Correct.</p> <p>4 Q. All right.</p> <p>5 A. And, you know, right now what I'm seeing</p> <p>6 in Miller County is, I'm filing these motions for</p> <p>7 caseload conference and -- you know, so cases are</p> <p>8 sort of dragging on. Also -- and kind of preceding</p> <p>9 that, I filed motions to withdraw, citing my</p> <p>10 caseload or motions to decline representation citing</p> <p>11 my caseload. You know, so clients -- or applicants</p> <p>12 for public defender services have been in jail for</p> <p>13 months. Now in Miller County, we're seeing people</p> <p>14 decide to, just on their own, talk to the prosecutor</p> <p>15 pro se, strike a deal, and go to prison.</p> <p>16 There was a fellow just the other day in</p> <p>17 Miller County who I represented on a criminal charge</p> <p>18 and had a probation violation. I entered on the</p> <p>19 criminal charge way before all of this unfolded. He</p> <p>20 picked up the probation violation; we filed, you</p> <p>21 know, a motion of some kind or another. He sat in</p> <p>22 jail a couple of months. Eventually he decided that</p> <p>23 he just wanted to go to prison. He talked to the</p> <p>24 prosecutor on his own, ended up waiving counsel on</p> <p>25 the probation violation, waived counsel on the</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 criminal charge that I was in, went to prison. 2 There's another fellow -- been in jail for 3 a couple of months in Miller County. We filed the 4 caseload motions. Again, he decided after sitting 5 in jail for a couple of months, I just want to have 6 my probation revoked and go to prison. There's 7 another fellow who appeared in the associate docket 8 within the last week or two, charged with a new 9 offense, and we either filed a motion or told him we 10 were going to file a motion, and he's like -- he 11 just went over and talked to the prosecutor, and 12 they cut a deal, he waived his preliminary hearing, 13 he sat on an arraignment docket for a plea with -- 14 either tomorrow or the 19th. 15 Q. So I'm going to ask some more questions 16 about that. 17 A. Sure. 18 Q. So going back to the first individual you 19 mentioned who you represented on the criminal and 20 then the probation violation. Had you entered 21 appearances on both of those? 22 A. Only the criminal, not on the probation 23 violation. 24 Q. Okay. And then that individual engaged in 25 a -- plea negotiations with the prosecutor pro se --</p>	<p style="text-align: right;">Page 67</p> <p>1 you can. I'm not sure -- I don't know that that's a 2 good idea, but that's what he ended up doing. The 3 prosecutor here -- and he, you know, sort of struck 4 this deal in court, they had the case recalled, they 5 added the other criminal case to the docket. He 6 admitted on the probation violation and pled guilty 7 pro se. 8 Q. All in that same courtroom? 9 A. Yes. 10 Q. On that day while you were there? 11 A. Yes. 12 Q. And so did he turn to the prosecutor and 13 discuss the -- a plea deal -- 14 A. Yes. 15 Q. -- at the counsel table or -- 16 A. Well -- I mean, the way that that 17 courtroom is laid out, you know, the table where the 18 prosecutor sits is not far away from where the 19 inmate sits. For example, behind you there's a 20 glass window. If instead of that window there were 21 a wooden half wall, and that's where the jury box 22 was, that's where he was seated. So the prosecutor 23 could turn around and engage with the person right 24 there. 25 Q. And where were you located in that</p>
<p style="text-align: right;">Page 66</p> <p>1 was that in court that that happened? 2 A. Yes. 3 Q. And you or someone from your office was in 4 that courtroom or -- 5 A. Yes, I was. 6 Q. Okay. Tell me more about the logistics of 7 how that -- 8 A. The gentleman appeared in jail on the 9 probation violation. Again, sort of my announcement 10 to the court was that we either had filed a motion 11 for caseload conference or were filing a motion for 12 caseload conference, and we'd not entered it on the 13 probation violation. And so I asked that that case 14 been set over to some date after what we anticipated 15 the case conference hearing date to be. And -- you 16 know, and at that point on the probation violation, 17 I think he had been in jail for two months on the 18 probation violation. And that's -- and so he -- you 19 know, the judge did, the gentleman sat back down, 20 and he called me back over, and he's like, Look, I 21 want to go to prison on this right now. I'm like, 22 I'm not going to enter my appearance and send you to 23 prison right now. And he expressed that he wanted 24 to waive counsel and wanted to talk to the 25 prosecutor, and so, you know -- I mean, that's --</p>	<p style="text-align: right;">Page 68</p> <p>1 courtroom? 2 A. Well, I was probably sitting at the other 3 table on the far side of the thing or, you know, up 4 in front of the judge. Once they started talking -- 5 once he told me, Hey, I -- you know, I -- I've 6 changed my mind, I don't really want you right now; 7 I want to talk to the prosecutor on my own. At that 8 point, I stepped out of the thing. 9 Q. And did he say why it was that he, as you 10 just said, didn't want you right now? 11 A. My impression was he didn't want to sit in 12 jail for another who knows how many months. In this 13 county, this circuit judge only comes to town every 14 two months, and so -- and that -- and that sort of 15 presents its own issue because say he comes into 16 town on the 1st of July, for example. His next date 17 is going to be September 1. So if on July 2 someone 18 gets arrested on one of his warrants, they're going 19 to sit in jail until September 1, and then he'll 20 bring them up to court, you know, if they want to -- 21 if they'll -- they can apply for a public defender 22 right then. If the case gets set over, it's going 23 to be November 1. 24 Q. This judge -- is there only one judge in 25 Miller County?</p>

17 (Pages 65 to 68)

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1 A. There are now three.

2 **Q. Okay.**

3 A. And the presiding judge is Judge Hayden.
4 You know, so he'll come every other month. New
5 circuit judge is Judge Hamner. He will come on his
6 cases on the months that Judge Hayden is not there.
7 So, for example, if Judge Hayden is July 1,
8 September 1; Judge Hamner will come August 1,
9 October 1. Does that make sense?

10 **Q. Uh-huh.**

11 A. Okay. They within the last couple of
12 years added a third circuit judge to that circuit,
13 and that judge has a docket every month. It'll be
14 towards the end of the month. But depending on who
15 you happen to be on probation in front of -- you
16 know, if you happen to be on probation in front of
17 one of the judges who comes only every other month,
18 that's going to have pretty substantial impact on --
19 for how long you're incarcerated in the event of a
20 violation.

21 THE WITNESS: I'm going to need a break at
22 some point, so when you get to a segue --

23 MR. SCHERZER: We can take a break now.

24 THE WITNESS: Okay. Thank you.

25 VIDEOGRAPHER: The time is 10:35 a.m., and

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1 another one of those cases that I picked up from
2 some other lawyer who picked it up from another
3 lawyer -- I can't recall off the top of my head.
4 But I had been in the criminal case for quite a
5 while. The probation case was much newer.

6 **Q. And you said you picked it up from**
7 **somebody else. You mean another lawyer in your**
8 **office?**

9 A. Correct.

10 **Q. Okay. Was that a lawyer -- if you recall,**
11 **was that a lawyer who had left the office that you**
12 **picked it up from?**

13 A. Yes.

14 **Q. Okay. And so the probation case--ballpark,**
15 **not an exact number, do you -- about how old was the**
16 **probation case? Do you know -- at the time?**

17 A. Ballpark?

18 **Q. Yeah.**

19 A. Two months, maybe a little more.

20 **Q. Okay. And had you been able to visit this**
21 **individual since he had picked up the probation**
22 **case?**

23 A. No.

24 **Q. And was that -- and why was that?**

25 A. I am drowning in cases and I'm horribly

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1 we are off the record.

2 (A recess was taken.)

3 VIDEOGRAPHER: The time is 10:54 a.m. and
4 we're back on the record.

5 **Q. (By Mr. Scherzer) So, Mr. Carver, I just**
6 **want to go back to that individual that you were**
7 **just speaking about. Do you know how much time he**
8 **got in prison as a result of his negotiations with**
9 **the prosecutor?**

10 A. I do not.

11 **Q. Is that because he was sentenced on a**
12 **different day other than the day that you were there**
13 **in court?**

14 A. No. I think he was -- I think he was
15 sentenced that day, but once he resolved to go pro
16 se and it was clear that he was in accord with the
17 arrangement that he and the prosecutor had entered
18 into, I turned my attention to, you know, the other
19 30-some-odd cases that I had on the docket.

20 **Q. Got it. And you said you had represented**
21 **him for a couple of months -- or you had entered**
22 **appearance at least on his behalf a couple of months**
23 **prior on the criminal case; is that correct?**

24 A. I think that my entry on the criminal case
25 was sometime in 2016. Now, if memory serves, it was

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1 behind on jail visits.

2 **Q. Okay. So given your other -- given your**
3 **very high caseload, as you've indicated previously,**
4 **and your responsibilities to those clients, you**
5 **hadn't been able to visit him in prison?**

6 A. Correct. Correct.

7 **Q. And had you been able to communicate with**
8 **him in some other fashion other than an in-prison**
9 **visit?**

10 A. Well, he had been in jail for the two
11 months preceding this very recent court date. I
12 don't believe I visited with him at all during these
13 two months. He had been free for a period of time,
14 and during that period of time that he was free, I
15 had no substantive contact with him himself. Before
16 that, he had been incarcerated, I believe, on the
17 criminal case, and then I did have contact with
18 him -- but it had probably been -- estimate,
19 probably a year since I had substantive private
20 contact with him outside of a courtroom.

21 **Q. Okay.**

22 A. And that's -- frankly, that's not unusual
23 right now for my caseload.

24 **Q. Okay. And during that year, some of which**
25 **he was incarcerated and some of which he was not, he**

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 was facing -- what kind of criminal charge was he 2 facing?</p> <p>3 A. It was a drug charge. I can't remember if 4 it was a simple possession charge or a possession 5 with the intent to distribute. Simple possession 6 would be a Class C felony that carries up to 7 years 7 in the department of corrections. Possession with 8 the intent at the time relevant to his case would 9 have carried five to 15 years in the department of 10 corrections. That since changed on January 1, 2017, 11 but his case preceded that.</p> <p>12 Q. Okay. And so what was happening with his 13 criminal case during that year?</p> <p>14 A. There was work that I had identified that 15 I needed to do: Depositions, investigation -- 16 didn't do it.</p> <p>17 Q. And that was because of the tremendous 18 caseload that you have discussed previously?</p> <p>19 A. Correct. It -- I mean, right now I am -- 20 even when I can get to talk to a client, commonly, I 21 will identify work that needs to be done on the 22 case, investigation, things to pursue. Actually 23 doing it is a whole other matter.</p> <p>24 Q. Okay. And is that represented -- is that 25 experience that you're describing, to your</p>	<p style="text-align: right;">Page 75</p> <p>1 incarcerated in the Cole County jail, sat there for 2 three years with no contact with his lawyer.</p> <p>3 Q. Sorry to interrupt. When you say "his 4 lawyer," do you mean an attorney -- a line attorney 5 from your office?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. Since that case has been reassigned to 9 me -- and it's probably been a year since I've 10 talked to him -- he's no longer in the Cole County 11 jail; he's in the department of corrections on 12 another matter.</p> <p>13 You know, circling back before January 1, 14 2017, there was a client who was in the 15 Miller County jail for four years, tells us he saw 16 his lawyer once, and I believe him, because there 17 are no notes of any kind in the file. When I look 18 at the file, it would appear that no work was done 19 in those four years. Subsequently, that lawyer 20 left; it was reassigned to another lawyer in my 21 office. That lawyer, after getting in the case and 22 getting involved in the thing -- ultimately, that 23 case ended up being dismissed on a speedy trial 24 violation five years and nine months after the 25 gentleman was incarcerated. You know, it's one of</p>
<p style="text-align: right;">Page 74</p> <p>1 knowledge, as their supervisor, is that 2 representative of the other attorneys in your 3 office?</p> <p>4 A. No. And that's because I'm attempting to 5 control their caseload. But the consequence to me 6 controlling their caseload and the consequence to me 7 telling the judges I'm not going to keep dumping it 8 on an assistant public defender, I'm going to give 9 it to myself. You know, consequence is that my 10 caseload has spiraled out of control. I've got more 11 cases now than anybody in the office by a 12 considerable number.</p> <p>13 Q. Prior to the time that you've instituted 14 the case control, which I believe -- that was 15 January 2017?</p> <p>16 A. Yes.</p> <p>17 Q. Prior to that time, with this experience, 18 that you -- when there were no caseload -- or not 19 these caseload controls for the line attorneys in 20 your office, was the experience you're now 21 describing representative of what was happening with 22 your line attorneys?</p> <p>23 A. My line attorneys were experiencing 24 exactly what I'm experiencing. You know, we had -- 25 goodness. There had been a fellow who was</p>	<p style="text-align: right;">Page 76</p> <p>1 these cases where, frankly, the work that my office 2 did -- I would describe it as grossly ineffective, 3 but that's forever going to escape any Strickland 4 Review because there was never any sentence to the 5 department of corrections that was imposed.</p> <p>6 There are a significant number of cases 7 like this where clients have just languished for a 8 year or two years without substantive work being 9 done on their case or without any contact with their 10 lawyer, without knowing what's going on with the 11 case. And that was something that was going on, you 12 know, when I took over the Jeff City office at the 13 end of 2014. You know, we've done a variety of 14 things to address that and try to prevent that from 15 happening. You know, right now, I don't believe 16 that that is happening with regard to my individual 17 lawyers and their caseload, but, you know, right 18 now, I'm absolutely not doing what I need to be 19 doing for my clients.</p> <p>20 Q. And so going to this individual who spent 21 five years and nine months waiting in jail, what was 22 happening at the court dates, if you -- if you know 23 during that time?</p> <p>24 A. What the docket entry says was trial 25 stricken and reset. Nine months later, there'd be</p>

19 (Pages 73 to 76)

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1 another docket entry, trial stricken and reset. One
 2 of the reasons it was dismissed on a speedy trial
 3 violation was the docket entries did not articulate
 4 who was requesting a continuance or why, and when
 5 the new lawyer took over four years into the case,
 6 ultimately, at some point thereafter was reassigned
 7 to a different judge as well. The judge that had it
 8 at the time of the dismissal had no history with the
 9 case and couldn't tell what the continuances were
 10 for. But the docket entries were exceedingly
 11 sparse.

12 **Q. And you said there are a number of other**
 13 **cases that you can think of just off the top of your**
 14 **head that are similar in nature, in terms of what**
 15 **happened to individual defendants?**

16 A. There was another client in the Miller
 17 County jail when I took over the Jeff City office at
 18 the end of 2014 who had been in jail for 16 months,
 19 never talked with his lawyer. You know -- even
 20 right now, you know, circling back to kind of my
 21 personal experience -- yesterday I was in the office
 22 trying to put files together for my Tuesday docket
 23 in Miller County, because I've got to have somebody
 24 cover because I'm tied up with something else. You
 25 know, in going through those, most of the cases, I

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1 couple examples you've just given about long periods
 2 of time with no work and no client contact is
 3 representative of what your office is -- what
 4 attorneys in your office were forced to do in the
 5 years prior to when you instituted this caseload
 6 control; is that right?

7 A. Correct.

8 **Q. And it's now representative of what you're**
 9 **forced to do on your own cases, given the number of**
 10 **cases you've taken on; is that right?**

11 A. Correct.

12 **Q. And you mentioned that your office -- you**
 13 **described your office in that case and in these**
 14 **similar cases as grossly ineffective. And is that**
 15 **because of the caseload that your line attorneys are**
 16 **experiencing or were experiencing prior to the**
 17 **caseload controls?**

18 A. Yes. I mean, I don't know how you could
 19 describe a guy sitting in jail for four years with
 20 no work being done on the case. I mean, I don't
 21 know how else you can describe that. It was a
 22 serious case. That client deserved representation.

23 **Q. And effective -- what you're describing is**
 24 **that client just wasn't receiving any representation**
 25 **at all?**

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1 had not talked with the client. There was one that
 2 I found where the client had been in jail at least
 3 two months, maybe more, maybe three or four on a
 4 probation violation matter. I've never been able to
 5 get to the jail to see her. So the note that I
 6 wrote to my lawyer is, Please tell the judge I'm
 7 wildly ineffective. I don't know what's going to
 8 happen with it. You know, right now, just sort of
 9 understanding my schedule and stuff like that, the
 10 best time I found to get to the Miller County jail
 11 to meet with clients is on a Sunday, you know? But
 12 you can only see so many people in one day, and, you
 13 know, when you've got dozens and dozens and dozens
 14 of people that are there, you are not going to be
 15 able to meet with them all in a day. And if you go
 16 back in another two weeks, you can meet with more of
 17 them, but, you know, I've got clients scattered in
 18 Miller County jail and most of the major
 19 correctional settings and other county jails.
 20 There's -- I'm working as much overtime as I can,
 21 but I can't keep up.

22 **Q. And so just to -- without -- you've given**
 23 **some helpful details about some of these stories.**
 24 **Without going into more detail about any of them,**
 25 **you mentioned that this is representative -- the**

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1 A. Nope.

2 **Q. And that was because of the case overload**
 3 **that your line attorneys were facing?**

4 A. Yes.

5 **Q. And that's representative of other cases**
 6 **in your office prior to the caseload controls?**

7 A. We had other cases not as dramatic, not
 8 four years old, but we had other cases where clients
 9 sat in jail for 12 months or more not having talked
 10 to their client -- not having talked to their
 11 lawyer.

12 **Q. And that individual that you were**
 13 **mentioning previously, the individual with the five**
 14 **years and nine months, do you recall what charge or**
 15 **charges he was facing?**

16 A. Sodomy, rape, assault one of an infant --
 17 I can't recall if it was charged to statutory or
 18 forceable sodomy, but those were the charges. And
 19 sort of the charges evolved. At one point the
 20 assault was dismissed voluntarily. Since the
 21 assault has been -- so it was the -- the rape,
 22 sodomy that were dismissed on speedy trial
 23 violations. Since the assault has been refiled and
 24 that case is now pending.

25 **Q. And that's because the assault had been**

20 (Pages 77 to 80)

1 voluntarily dismissed in the interim or what?

2 A. Yes. And I -- and I understand -- and --
3 yes. Yes.

4 **Q. And so what class of offense are those**
5 **sodomy, rape -- what class of offense is that?**

6 A. This gentleman is charged with
7 unclassified ones that could carry an unlimited
8 number of years. A million years would be a
9 permissible sentence or life -- times two, because
10 there was one of each. I think it was one rape, one
11 sodomy. Maybe it was two sodomies. Facing
12 significant charges.

13 **Q. Facing up to his entire life in prison?**

14 A. Correct. Yes.

15 **Q. And didn't -- effectively didn't have any**
16 **representation for five years?**

17 A. For at least four.

18 **Q. At least four.**

19 A. At least four. And then that lawyer left
20 and it got reassigned. And, actually, the lawyer
21 that it was reassigned to then did eventually get
22 into the thing and start doing good substantive
23 work. When I say "eventually," you know, 2017 was a
24 bad year for my specific office. The year that the
25 initial counsel left was 2014. That was another bad

1 year for my office. I can think of at least three
2 lawyers off the top of my head who left the Area 19
3 public defender's office right about the same time.
4 And so all of those cases -- you know, when I came
5 in at the end of 2014, it was a train wreck.
6 Everybody had 2- or 300 cases each, and it took
7 forever to dig out from under that.

8 **Q. And so the other cases that you were**
9 **speaking of prior to the caseload controls, that**
10 **your line attorneys had similar experiences with**
11 **clients going long stretches without any work being**
12 **done on their cases, that wasn't confined to just**
13 **one attorney in your office?**

14 A. It was not.

15 **Q. Was that, to your knowledge, every**
16 **attorney in the office or most attorneys?**

17 A. It was -- there were several lawyers who
18 I -- I saw that happened.

19 **Q. Okay. Have you told other -- you**
20 **mentioned that you instructed your -- one of the**
21 **attorneys in your office who is covering for you**
22 **tomorrow to tell the judge that you were wildly**
23 **ineffective on that case due to your other caseload?**

24 A. Uh-huh.

25 **Q. Have you told other judges that you have**

1 **been ineffective on cases due to your caseload?**

2 A. I've been telling my judges that
3 consistently all year as my caseload has grown.
4 And, you know, generally, they express sympathy and
5 tell me to do the best I can, and I do, but, you
6 know, at least in Miller County, I've been
7 articulating that on a regular basis, you know,
8 Judge, I can't possibly take more cases; I'm not
9 doing a good job with the cases I've got. I'm not
10 talking to my clients now; don't give me more, and,
11 consistently, I'm ordered in over my objection.

12 **Q. And what do the judges say, if anything,**
13 **about the rationale for ordering you in, despite you**
14 **telling them that you would be ineffectively**
15 **representing that client?**

16 A. That -- they've sort of expressed
17 different things at different times. You know,
18 the -- one of the judges there has expressed that he
19 doesn't feel like he has any other good options. He
20 feels like it's not the responsibility of the
21 private bar, and that the private bar did not make
22 this mess and -- I've asked him to appoint
23 state-employed lawyers. You know, pick on some
24 someone from the department of revenue, legislative
25 research. His concern there is that he's got to

1 make sure that they're competent, and if you appoint
2 a tax lawyer on a case, they aren't going to know
3 anything about the criminal side of it. They aren't
4 going to know anything about criminal law. My
5 response to that is, Judge, if the person can read
6 the file and take the time to talk to the client,
7 they've got a leg up over me now. I can do all of
8 the criminal law in the world, but I don't have time
9 to work the case.

10 At other points in time, he said, Well,
11 I'm not going to implement that remedy because
12 that's going to be bad for the agency or it's going
13 to cause you more problems or the legislature will
14 never find you. At other points in times he's said,
15 Really, the remedy is legislative; it's not
16 judicial, and that tends to be a commonality. I
17 mean, other judges have expressed to me that, you
18 know, Look, I don't have the tools to solve this
19 mess. Really, it's the legislature.

20 **Q. Okay. And just going to the -- to that --**
21 **to the tax lawyer that you were speaking of or**
22 **someone from -- you know, as an example, if you had**
23 **to actually -- if you had time to adequately work on**
24 **your cases, presumably -- or do you agree with the**
25 **judge that you would be more effective for that**

<p style="text-align: right;">Page 85</p> <p>1 criminal defendant since you have long practiced 2 criminal law and are experienced in criminal law? 3 A. I think I would have a head start -- 4 understanding I've been practicing now criminal law 5 15 years, I would certainly have a head start over a 6 lawyer who has not touched anything criminal 7 law-related since criminal law class in law school, 8 okay? Yes. But that sort of assumes a rational 9 caseload. I mean, right now, you can know 10 everything that there is to know about criminal law, 11 but when you've got more than 200 cases, it's not 12 going to do you any good, because you're not going 13 to have time to talk to the clients, you're not 14 going to have time to do the legal research, to file 15 the motions, to visit the investigation, to visit 16 the crime scene, to go look at the physical 17 evidence, to effectively advise the client. I mean, 18 you know, right now, my knowledge of criminal law on 19 your average day is generally useless because I 20 don't have time to -- I don't have time to pursue 21 it. 22 Q. And how does that make you feel as someone 23 who has been practicing for -- for 15 years, 24 criminal law? 25 A. 2017 has certainly made me consider other</p>	<p style="text-align: right;">Page 87</p> <p>1 my five lawyers -- or my -- sorry -- seven lawyers 2 to practice ethically in hopes that it would stop 3 the bleeding and prevent some of the rampant 4 turnover. You know, I can't -- I can't build 5 anything in terms of a well-functioning office if 6 the foundation is always being taken out from 7 underneath me. I've got to find a way to retain 8 lawyers so that can I teach them how to try 9 complicated cases and do a good job of it. You 10 know, we've got murder cases, we've got rape cases, 11 we've got complex cases where the client deserves a 12 lawyer with significant experience. You know, right 13 now I'm assigning murder cases to lawyers who have 14 been practicing for two or three years. If I can't 15 find a way to retain the lawyers I've got, then I'm 16 going to be assigning murder cases to a lawyer 17 that's been practicing less than a year. 18 Q. And you're assigning it that way because 19 the second senior line attorney has been practicing 20 for two years? Is that -- 21 A. Right. I've got one that's been 22 practicing since 2010, but the second most senior 23 lawyer has got three years under their belt. 24 Q. And you said that your hope is that after 25 you instituted the caseload controls in January of</p>
<p style="text-align: right;">Page 86</p> <p>1 employment options. Yeah. I mean, I'm not -- I'm 2 certainly not practicing the way I want to be. My 3 clients are given the short end of the stick. It's 4 not fair to them. I would not want me as a lawyer 5 right now. And -- I'm not sure how long I'm going 6 to do this. Give me a rational caseload, I'll 7 retire with the agency. 200 cases, I don't know how 8 much longer ... 9 Q. And to follow up on that, you're -- you've 10 taken on all of those cases in order to protect your 11 line attorneys from the massive overloads that they 12 were facing prior to your taking on all of those 13 extra cases? 14 A. Yeah. And, you know, sort of what they'd 15 expressed to me if I didn't, they were all going to 16 quit. And, historically, what we've done in the 17 public defender's office is the district defender 18 has a reduced caseload -- typically, significantly 19 reduced because of the management responsibilities, 20 and we're going to flood the assistant public 21 defender with an impossible number of cases, and 22 we'll tell them to swim. And what I've seen in my 23 time is that invariably we burn out lawyers and they 24 quit. Part of the thought process behind this 25 strategy was sort of -- it was an attempt to allow</p>	<p style="text-align: right;">Page 88</p> <p>1 2017, that your lawyers would be able to practice 2 ethically. 3 A. Uh-huh. 4 Q. Is your opinion that prior to those 5 caseload controls being implemented, your attorneys 6 were not being able to practice according to their 7 ethical responsibilities? 8 A. Well, I mean, that's -- they told me they 9 felt like they were not. And when they brought that 10 concern to my attention, yeah, we took a number of 11 steps to deal with it. You know, and, frankly, when 12 I took over the course in 2014, it was clear that 13 there were problems then. How much of it was a 14 caseload issue as compared to a -- you know, we've 15 got positions we need to field issue, as compared to 16 we're taking cases that we shouldn't be taking. 17 That, it took some time for me to sort things out. 18 It kind of was my impression when I took over in 19 2014 that there were a number of things going on, 20 and so we -- we hired to fill the vacant positions, 21 and that certainly helped. But that was one of the 22 reasons that we were not -- not handling cases that 23 we ought to be. 24 We also changed how we screened 25 applications for public defender services. As a</p>

22 (Pages 85 to 88)

<p style="text-align: right;">Page 89</p> <p>1 result, that did reduce our caseload, and that</p> <p>2 certainly helped. You know, and even after that, it</p> <p>3 struck me that there was still a problem then, and</p> <p>4 so at different points in time, I was in contact</p> <p>5 with our management and was allocated some money to</p> <p>6 contract out some of the cases. At another point in</p> <p>7 time, when that didn't do the trick, I was allocated</p> <p>8 an additional staff member, and that certainly</p> <p>9 helped. And when all of those things did not prove</p> <p>10 effective, you know, that was kind of when the</p> <p>11 lawyers came to me at the end of 2016 and said, Hey,</p> <p>12 this is a problem.</p> <p>13 Q. And so even after you tightened the</p> <p>14 requirements for indigency determinations and got an</p> <p>15 additional step and the other things you've</p> <p>16 described, the problems still persisted in your</p> <p>17 office in terms of caseload?</p> <p>18 A. Correct. Our head was still underwater;</p> <p>19 it was just less so.</p> <p>20 Q. Okay. I'd like to show you what I'll mark</p> <p>21 as exhibit-- Plaintiff's Exhibit 18.</p> <p>22 (Deposition Exhibit No. 18 was marked for</p> <p>23 identification.)</p> <p>24 Q. (By Mr. Scherzer) Let me know when you've</p> <p>25 had a chance to glance at this.</p>	<p style="text-align: right;">Page 91</p> <p>1 first time I communicated our caseload staffing</p> <p>2 problems to the courts.</p> <p>3 Q. Okay. So you believe you sent similar</p> <p>4 e-mails for at least the two years prior to this</p> <p>5 e-mail?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And to the -- to the judges and</p> <p>8 prosecutors in District 19?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. I'd like to turn to -- and looking</p> <p>11 again at the Bates numbers in the bottom middle of</p> <p>12 the page to 39421.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Can you read out for us the</p> <p>15 first -- I guess it's two paragraphs -- starting</p> <p>16 with, "I wish had I better news."</p> <p>17 A. Sure.</p> <p>18 "I wish I had better news. The struggles</p> <p>19 of the public defender office remain. Every single</p> <p>20 one of my lawyers has expressed to me that their</p> <p>21 caseload is too high and that they cannot</p> <p>22 effectively handle the cases that they have. I have</p> <p>23 lawyers threatening to quit if I don't get their</p> <p>24 caseloads down to a level where they can be</p> <p>25 effective. Director Barrett tells me that the</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Okay. I'm familiar with it.</p> <p>2 Q. Okay. Do you recognize this?</p> <p>3 A. Yes.</p> <p>4 Q. And what is it?</p> <p>5 A. This is an e-mail thread that started with</p> <p>6 an e-mail that I sent to the courts and the</p> <p>7 prosecutors December 29, 2016, with follow-up</p> <p>8 responses from some of the various parties.</p> <p>9 Q. And I believe this -- when you say --</p> <p>10 earlier, when we were discussing which documents you</p> <p>11 reviewed, you said you reviewed an e-mail chain from</p> <p>12 December of 2016. Is this the e-mail chain that you</p> <p>13 were referring to that you recently reviewed?</p> <p>14 A. Yes.</p> <p>15 Q. All right.</p> <p>16 A. Tangentially, prior to this e-mail, I had</p> <p>17 a number of other e-mails from me to the court</p> <p>18 starting the end of 2014 telling them what was going</p> <p>19 on with our caseload and staffing situation. I did</p> <p>20 not save any of those e-mails, and, to my knowledge,</p> <p>21 they're long gone. Like, when I received the</p> <p>22 discovery request from Ms. Shipma, I went back</p> <p>23 through to look for them. I deleted them quite some</p> <p>24 time ago, but I will tell you there were a number</p> <p>25 of -- this -- the December 29 e-mail is not the</p>	<p style="text-align: right;">Page 92</p> <p>1 agency turnover is now at 22 percent. I agree that</p> <p>2 my lawyers are all overloaded. As they are all</p> <p>3 overloaded, I can't reassign cases from one lawyer</p> <p>4 to another to fix the problem. Ethically, I can't</p> <p>5 ignore the problem, and neither can my lawyers. As</p> <p>6 a practical matter, if I don't deal with the</p> <p>7 problem, my lawyers will find their own solution by</p> <p>8 finding new employment. I have to do something to</p> <p>9 get my lawyers' caseloads down to a level where they</p> <p>10 can be effective."</p> <p>11 Q. Okay. And I want to just track back to</p> <p>12 the two -- the "to" line on this e-mail. Can you</p> <p>13 just tell me who these individuals are in this "to"</p> <p>14 Line?</p> <p>15 A. Sure. Stan Moore was a circuit judge in</p> <p>16 the 26th Judicial Circuit that serves Miller,</p> <p>17 Moniteau Counties, also Camden, Laclede, and Morgan</p> <p>18 Counties. Judge Moore has since retired. Kenneth</p> <p>19 Hayden is the presiding judge of the 26th Circuit.</p> <p>20 Jon Kaltenbronn is associate court judge in</p> <p>21 Miller County. At the time, those were the only</p> <p>22 judges serving my part of the 26th Circuit in</p> <p>23 Miller County. Later in that header you see</p> <p>24 Peggy Richardson. She was, at the time, the</p> <p>25 associate judge in Moniteau County. She has since</p>

23 (Pages 89 to 92)

<p style="text-align: right;">Page 93</p> <p>1 been made third circuit judge in the 26th Judicial 2 Circuit. Judge Joyce is a circuit judge in the 3 19th Judicial Circuit, which is Cole County. 4 Judge Beetem, circuit judge, Cole County. 5 Thomas Sodergren, associate judge in Cole County. 6 Dan Green is a circuit judge in Cole County. 7 Judge Schollmeyer is an associate judge in 8 Osage County. He comes to Cole County on some 9 special judge cases and criminal nonsupport cases. 10 Markrichardson@colcopa.com, he is the elected 11 prosecutor of Cole County. Benjamin Winfrey, the 12 elected prosecutor of Miller county. The e-mail 13 address prosecutor@moniteaucounty.org is the e-mail 14 address that the elected prosecutor Shane Healea 15 uses for Case.net notifications and filings and 16 stuff like that, so I use that as an e-mail for him. 17 His last name, to my knowledge, is H-a-e-l-a-e 18 [sic] -- or H-e-a-l-e-a -- I can't remember which. 19 Q. (By Mr. Scherzer) And -- sorry. Just 20 shifting over on the page prior to that, 39420. 21 There's a "from," and is that your e-mail address? 22 A. That is -- I'm looking -- 23 Q. Sorry. The bottom of 39420. 24 A. Bottom of 39420. There's a from 25 Judge Richardson to myself cc'ing in the other</p>	<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. And you mentioned this previously, 2 but what precipitated this particular e-mail, if 3 anything? 4 A. The December 29, 2016, e-mail was 5 precipitated by a number of lawyers walking into my 6 office and saying, in very colorful language, we've 7 got too many cases, and if you don't stop giving us 8 this many cases, we're all going to quit. 9 Q. And how many of your attorneys, if you 10 recall, came into your office and said that? 11 A. Three, perhaps, four. 12 Q. So at -- half or more than half of the 13 attorneys in your office? 14 A. About half. 15 Q. Okay. And was that something that you had 16 heard from them previously -- not that -- that they 17 had -- sorry. Scratch that. 18 Was the fact that they had too many cases 19 something that you heard from the line attorneys in 20 your office previously? 21 A. Well, certainly, when it started in 2014, 22 everybody expressed that they had too many cases. 23 And, you know, at that point, like I said, there 24 were a number of things going on, and so we tried to 25 deal with each of the things to get the caseloads</p>
<p style="text-align: right;">Page 94</p> <p>1 people who were in on that thread. 2 Q. Oh, I'm sorry. The very, very bottom. 3 A. Oh, I apologize. Yes, I see that. 4 Q. That just tracked over that page, but this 5 is obviously an e-mail that you sent to all of these 6 individuals? 7 A. Yes. 8 Q. Is that effectively every judge and head 9 prosecutor in the relevant counties that you 10 represent individuals in? 11 A. Yes. With the sole exception of if there 12 was some random case that happened to have a special 13 judge out of some random county that I wasn't aware, 14 they were not included on this e-mail. But these 15 were the judges who we would have seen for 16 99.5 percent of our cases. 17 Q. Okay. 18 A. Perhaps all of them. 19 Q. And so in that -- now we're returning to 20 the body of the e-mail. The second sentence saying, 21 "The struggles of the public defender office 22 remain." And was that referring to the other e-mail 23 that you sent previously indicating case overloads 24 and problems in your office? 25 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 down, and we did. And, understand, all of these 2 things sort of unfolded over time. You know, from 3 2014 to 2016, we made significant progress in 4 reducing the caseload of every single one of the 5 lawyers. You know -- so we were certainly -- so, 6 yes. I mean, as a part of all of this, there was 7 kind of a dialogue of, you know, we've got too many 8 cases. Well, I -- you know, these are the things 9 that we're doing to deal with it. But we did not 10 have sort of the formal caseload restriction until 11 the time period surrounding this e-mail. 12 I don't know if that was responsive to 13 your question. I'm sorry. Did that answer -- 14 Q. Yeah. 15 A. I mean, certainly, between 2014 and 2016, 16 lawyers complained to me about their caseload; we 17 were doing other things to address it that weren't 18 necessarily in this e-mail. 19 Q. Okay. But, obviously, at least from your 20 line attorneys' perspective, you hadn't addressed 21 the problem because half of them -- or more than 22 half of them said they were going to quit if 23 something further wasn't done? 24 A. Right. It had not -- certainly had not 25 fully addressed the problem. It was not as bad as</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 it was in 2014, but it was not where it needed to be</p> <p>2 either.</p> <p>3 Q. Okay. And then can you just read the --</p> <p>4 just the first sentence of the paragraph that</p> <p>5 begins, "As an agency."</p> <p>6 A. "As an agency, the public defender's</p> <p>7 office has tried everything it can think of to get</p> <p>8 its caseload under control."</p> <p>9 Q. Okay. And I -- and in that -- you're</p> <p>10 referring to the steps that you have taken</p> <p>11 previously in your district office?</p> <p>12 A. Over and above that. So the public</p> <p>13 defender's office, in the time I've been with the</p> <p>14 agency, we've gone to the legislature and asked</p> <p>15 nicely for more money and gone to the governor and</p> <p>16 asked nicely for more money and we've gone to the</p> <p>17 Supreme Court and asked to be exempted from time</p> <p>18 standards and we've gone to the Supreme Court and</p> <p>19 asked for caseload controls and we've passed an</p> <p>20 administrative rule, and that was challenged in</p> <p>21 court, and then we passed another administrative</p> <p>22 rule. And then we -- there was -- you know, there</p> <p>23 was a statute that was passed. And, you know, there</p> <p>24 was the Senate interim committee that got together</p> <p>25 to study the thing. We've been studied by the</p>	<p style="text-align: right;">Page 99</p> <p>1 it's not ...</p> <p>2 Q. Okay. And then just in the paragraph</p> <p>3 above that, it -- there's a reference to the</p> <p>4 Jeff City office, which I assume is the Area 19 --</p> <p>5 A. Yes.</p> <p>6 Q. -- office's current caseload is about 250</p> <p>7 percent of its capacity.</p> <p>8 A. Yes.</p> <p>9 Q. And that's from the ABA RubinBrown study;</p> <p>10 is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So then in the paragraph beginning</p> <p>13 with, "Starting in January," towards the bottom of</p> <p>14 that page -- can you -- can you read out that</p> <p>15 paragraph?</p> <p>16 A. Sure.</p> <p>17 "Starting in January, when I receive a</p> <p>18 qualifying application for public defender service,</p> <p>19 I will do one of two things. If the applicant is in</p> <p>20 jail, I will assign the applicant a lawyer</p> <p>21 immediately until all of my lawyers have become</p> <p>22 overloaded. If the applicant is not in jail, I will</p> <p>23 hold the application until the end of the month. If</p> <p>24 I have available lawyers at the end of the month, I</p> <p>25 will assign it to one of my lawyers. If I don't</p>
<p style="text-align: right;">Page 98</p> <p>1 Spangenberg Group at least twice in the time we've</p> <p>2 been here. We had RubinBrown come in and study us</p> <p>3 because the legislature said, Give us the Missouri</p> <p>4 specific standard; give us some data; we need</p> <p>5 something other than your professional judgment. So</p> <p>6 we did the work; we got the data. And, you know, at</p> <p>7 least as an agency, you know, in terms of having had</p> <p>8 court hearings, having gone to the Supreme Court,</p> <p>9 having gone to the legislature, having gone to the</p> <p>10 governor -- I mean, you know, this is something that</p> <p>11 we've been dealing with for -- as long as I've been</p> <p>12 around. And so that sentence was really more</p> <p>13 intended to be a reference to all of the things that</p> <p>14 the -- the agency has done in the preceding decade,</p> <p>15 plus to try to deal with the caseload problem.</p> <p>16 Q. Okay. And, obviously, you indicated that</p> <p>17 your -- you, in your capacity as district defender</p> <p>18 in Area 19, had also taken a number of steps to try</p> <p>19 to address the caseload problem as well?</p> <p>20 A. Yes. And, actually, it -- you know,</p> <p>21 further down in that paragraph there's a sentence</p> <p>22 that begins with, "Internally, I have done</p> <p>23 everything I can think of." And that's -- you know,</p> <p>24 that's sort of a reference to me telling them, Hey,</p> <p>25 look, I've done everything I can do, too. You know,</p>	<p style="text-align: right;">Page 100</p> <p>1 have available lawyers, I will be filing a motion to</p> <p>2 appoint a lawyer who is employed by the State of</p> <p>3 Missouri, such as a lawyer for DNR or the PSC, et</p> <p>4 cetera. After all, it is the state's responsibility</p> <p>5 to provide counsel for those who cannot afford it;</p> <p>6 it is not the responsibility of the private bar. In</p> <p>7 the event that the motion is overruled, we will not</p> <p>8 refuse to provide representation. Instead, I will</p> <p>9 exercise my discretion to assign the case to myself.</p> <p>10 I will not assign additional cases to an already</p> <p>11 overburdened assistant public defender. If</p> <p>12 qualifying cases continue to come into my office at</p> <p>13 the same rate, my personal caseload will increase</p> <p>14 significantly. I am not Superman, and I know I</p> <p>15 can't do it all. I could be forced to file</p> <p>16 continuance motions and/or motions to withdraw. The</p> <p>17 immediate impact on your courts will be that when an</p> <p>18 applicant is not in custody, I will not be able to</p> <p>19 give you an immediate answer as to whether that</p> <p>20 person qualifies. Obviously, this impacts the</p> <p>21 administration of your courts and the handling of</p> <p>22 your dockets. This presents an inconvenience for</p> <p>23 the courts and the applicants. For that reason, I</p> <p>24 feel that you deserve a heads up. Nonetheless, as a</p> <p>25 supervisory lawyer, I have a specific ethical</p>

<p style="text-align: right;">Page 101</p> <p>1 obligation to monitor and control the caseloads of 2 my assistants. I simply can't keep assigning my 3 lawyer cases at the rate that I have been assigning 4 them." 5 Q. Okay. And then can you read that -- just 6 the last sentence on that -- the last two sentences, 7 sorry, on that page? 8 A. Sure. 9 "It seems worth mentioning that I don't 10 really love this plan. Frankly, I don't know what 11 else to do." 12 Q. And so you've described some or previously 13 what you are thinking when you sent this e-mail, but 14 anything else you haven't said previously about your 15 feelings about this e-mail or why it is you felt the 16 need to send it? 17 A. Well, there are sort of a number of things 18 that precipitated it. You know, the immediate spark 19 was the lawyers walking into my office. Preceding 20 that, in September of 2016, there was a management 21 meeting that all of the district defenders in the 22 state went to, along with senior management, and at 23 least previously -- preceding this September 2016 24 management meeting, the directive that we had 25 received as a line district defender was that, you</p>	<p style="text-align: right;">Page 103</p> <p>1 underwater; it's just a matter of how far underwater 2 they are. Not hearing -- in this, sort of, meeting 3 with the local office, the assistant public 4 defenders, and with senior management, not hearing 5 any other solution that would really get my lawyer's 6 caseloads down, this was sort of the decision that I 7 made following the meeting -- well, the solution, 8 frankly, kind of stinks, but I don't know what else 9 to do. 10 And so that was sort of what had preceded 11 this e-mail to the courts. My fear was -- one of 12 the options that we talked about in the meeting was 13 lawyers on an individual caseload just litigating 14 their caseload, filing motions to decline or motions 15 to withdraw or what have you. You know, my 16 impression was none of those were going to get 17 granted, and it wasn't going to bring the lawyers 18 any effective caseload relief, and then they'd all 19 end up just quitting, and then -- you know? It 20 wouldn't fix the problem. 21 The thought was, at least with this 22 remedy, at least the assistant public defenders can 23 practice consistent with the rules of professional 24 conduct, or at least they have a fair shake of doing 25 it, or we can all not, so. As between all of us</p>
<p style="text-align: right;">Page 102</p> <p>1 know, we're going to -- that management will sort of 2 figure out the strategy for dealing with caseload 3 going forward; don't you all go rogue and do your 4 own things; we want to do this on a statewide basis 5 to be consistent. The upshot of the message from 6 the September 2016 management meeting was, as I took 7 it to be, we've exhausted all of our options; we 8 don't know what else to do; we now wish to empower 9 local offices to come up with their own solution to 10 the situation. 11 When, you know, the lawyers came into my 12 office and said, Hey, you keep giving us all of 13 these cases, we're all going to quit, the first 14 thing I did was contacted senior management -- well, 15 I -- we called a meeting, we talked about it, and 16 then I contacted senior management, and there was an 17 additional meeting in the Jefferson City office 18 preceding that September 29 e-mail where we kicked 19 around a number of different options. And, frankly, 20 my impression of the thing was nobody had any great 21 options. Nobody -- I mean, really, this is 22 something we've been dealing with for forever. The 23 state public defender system doesn't have more 24 lawyers in their back pocket that they can 25 reallocate to Jefferson City. Every office is</p>	<p style="text-align: right;">Page 104</p> <p>1 practicing ineffectively or just me, I'd rather it 2 just be me. 3 Q. So prior to January 2017, before you 4 instituted these caseload controls, your opinion was 5 that the rest of the attorneys in your office were 6 practicing ineffectively? 7 A. Yes. In talking to him, I felt like they 8 had too many cases, and so we had to -- and it -- 9 you know, it wasn't a thing on their part. I think 10 that it was -- even in spite of all of the things 11 that we had done internally, in spite of all of the 12 things that the agency had done since, you know, 13 2004 or whenever, they still had too many cases, and 14 I had to address it; I had to do something to deal 15 with it. And so immediately, come January 1, we put 16 everybody on sort of a caseload diet where we 17 limited the number of incoming cases every month, 18 and when we believed they could not take additional 19 cases, we cut them off. 20 Q. Okay. And what happened to it? 21 Obviously, you didn't -- sorry. I'll rephrase. 22 Was your office -- sorry. I'll rephrase 23 again. 24 What happened to the other cases that you 25 would have previously been receiving in your office?</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 A. We filed motions to decline representation 2 or motions to appoint a state lawyer or -- the 3 motion was sort of an evolving thing over time, but, 4 ultimately, it was some sort of motion to appoint 5 somebody else, a motion to decline representation, 6 or, Judge, you've got other options, too: You can 7 take jail off the table or you can let the person -- 8 let the accused out of jail or you can continue the 9 case or -- I can't remember all of the remedies that 10 were in there. It was kind of a kitchen sink. Some 11 of the affected applicants ultimately were able to 12 retain counsel. Some of the affected applicants 13 waived counsel and proceeded on their own. Some of 14 the affected applicants we were able to get into 15 their case at a later point in time.</p> <p>16 Q. When you say "get into their case at a 17 later point in time," what -- can you tell me what 18 that means?</p> <p>19 A. Enter an appearance, assign them a lawyer, 20 and initiate representation.</p> <p>21 Q. Sorry. My question wasn't clear. And 22 what would happen in the interim before you entered 23 an appearance?</p> <p>24 A. Probably nothing. I'd certainly -- we 25 would not engage in representation.</p>	<p style="text-align: right;">Page 107</p> <p>1 of their right to counsel. So it sort of depends 2 on -- yeah.</p> <p>3 Q. Right. Right. And do you have any sense 4 of how many -- in how many cases you've filed one of 5 these motions to decline representation or appoint 6 another attorney?</p> <p>7 A. In various formats, whether it's a motion 8 to decline representation or a motion to decline 9 representation and appoint a state lawyer -- or now 10 we're filing motions for caseload conference. There 11 have been literally hundreds. As of yesterday, we 12 had filed 120 about -- approximately -- caseload 13 conference motions that were pending. And those -- 14 so these are people who meet the financial criteria 15 for public defender and have an eligible case, but 16 instead of entering, we filed a motion for caseload 17 conference.</p> <p>18 Q. Okay. So 120 motions for caseload 19 conferences and more than 100 motions for -- to 20 decline representation or less than 100?</p> <p>21 A. More than 1500. The motions to decline 22 representation or the motions to decline 23 representation and appoint a state lawyer, I would 24 estimate, ballpark, between 2- and 300 motions we've 25 filed.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. Okay. And was there a waiting list of 2 individuals waiting for representation from your 3 office?</p> <p>4 A. Well, we'd had applicants who had applied, 5 and we'd filed a motion to decline or a motion to 6 appoint somebody or what have you. I've gone round 7 and round with people as to whether that would be -- 8 whether you call in a wait list or not -- I mean, I 9 don't know what you want to call it, but what was 10 happening, was some people would apply, and we could 11 not take their case, so we would file a motion. 12 Sometimes we'd be able to get into it later; 13 sometimes the issue would sort of become moot from 14 my perspective, in that they may hire a lawyer. But 15 that was what was going on.</p> <p>16 Q. Or it could become moot in some sense that 17 they -- if they represented themselves, having 18 waited too long, in their opinion, for a public 19 defender to be assigned?</p> <p>20 A. It would no longer be -- I mean, we would 21 no longer have to get in the case, if the case was 22 then closed.</p> <p>23 Q. Right.</p> <p>24 A. It would not become moot from a 25 perspective of, you know, was this person deprived</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. Is there any other broad -- so 2 there's 2- and 300 of those motions; 120ish of the 3 caseload conference motions. Any other broad 4 category of motions you've filed in a similar event, 5 or does that cover the waterfront, pretty much?</p> <p>6 A. On my existing cases, we filed a number of 7 motions to withdraw from representation based on 8 caseload after we have entered. Does that make 9 sense?</p> <p>10 Q. Uh-huh.</p> <p>11 A. Okay.</p> <p>12 Q. And you said "my cases." You mean cases 13 where you, yourself, were appointed -- or have 14 entered appearances in, not other attorneys in your 15 office?</p> <p>16 A. Correct.</p> <p>17 Q. And those were clients that you were 18 already representing that you filed a motion to 19 withdraw due to your excessive caseloads?</p> <p>20 A. There were motions that I entered 21 previously. Following the entry, I received all of 22 these additional appointments that were over my 23 objection, and so then I sought to withdraw from 24 cases that I had already entered into.</p> <p>25 Q. And move to withdraw and appoint a private</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 attorney or move to withdraw and provide remedy as 2 the court sees fit or ...</p> <p>3 A. Appoint a private lawyer, appoint a state 4 lawyer, take jail off the jail. I mean, it's a 5 kitchen sink of proposed remedy.</p> <p>6 Q. Okay. And in those motions to withdraw, 7 approximately how many, ballpark, of those motions 8 to withdraw have you filed?</p> <p>9 A. I'm not sure off the top of my head. I 10 really don't know.</p> <p>11 Q. Okay. Do you think more than 30?</p> <p>12 A. Yes.</p> <p>13 Q. All right. More than 50, do you think?</p> <p>14 A. Fifty is a good starting guesstimate. One 15 of the things I've got on my staff's to-do list is 16 go back and file them on all of the cases that I've 17 not previously filed one on. So depending on when 18 they can get that done, you know, they may be filing 19 more as we speak. I don't know.</p> <p>20 Q. When you say "all of the cases," do you 21 mean each and every one of your 213 cases?</p> <p>22 A. Except for ones that I had just been 23 appointed on within the last month or two, yes. 24 And, you know, my approach with that is going to 25 be -- you know, I don't -- the situation being what</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Okay. And, obviously, since you've 2 already described it, you understand that that's 3 deleterious to the clients in that case, but you 4 have no choice, given your excessive caseload?</p> <p>5 A. Absolutely. But, you know, frankly, it 6 would be deleterious to the client to have their 7 lawyer switched around a year into a case, for 8 example, and be assigned someone who knows nothing 9 about it. What I am telling my courts right now, 10 Judge, if you put me in this case, my representation 11 is going to be deleterious to this client. I cannot 12 do this client justice right now. I am not doing 13 justice on my existing cases. I'm not doing the 14 work that I ought to be doing. And it's not a 15 willful thing. I'm working overtime. I can't keep 16 up. There are only so many hours in the day.</p> <p>17 Q. And you're describing, for example, going 18 to jail visits on Sundays and the like.</p> <p>19 A. Yes.</p> <p>20 Q. You're working on the weekends, as well, 21 but you can't handle 213 cases?</p> <p>22 A. I cannot.</p> <p>23 Q. And that's in addition to the numerous 24 responsibilities you have as a district defender and 25 that we've discussed previously, in terms of running</p>
<p style="text-align: right;">Page 110</p> <p>1 it is, I'm never going to convince one of my judges 2 that I should not have a caseload. And, frankly, I 3 should probably have some small caseload. I would 4 never expect my courts to let me out of every single 5 one of my cases, but I do think that I -- at this 6 point, my caseload being what it is, I think I'm 7 obliged to seek leave to withdraw from all of my 8 cases, and if that motion were granted as to 211 of 9 my cases, I might not need to pursue it on the last 10 two, but, you know, as a practical matter, I filed 11 that motion a number of times; I've not successfully 12 had it be granted ever, so I'm not anticipating that 13 it be granted on any of my -- in any of the future 14 cases in which I file it.</p> <p>15 Q. And is the basis for that motion -- 16 because I don't think we have one of those here, but 17 is the basis for that saying that in that motion 18 it's due to my excessive caseload?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And so since you either have or are 21 planning to file it, essentially, in every one of 22 your cases, that includes cases that you have done 23 substantive work on for however -- for months or 24 perhaps years?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 the office and hiring and budget and administration 2 and supervision?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And just to tie up that last piece 5 about supervisor, in addition to all of the 6 administrative tasks you have, you're also 7 responsible for supervising and training the 8 line attorneys in your office; is that right?</p> <p>9 A. Yes. Some of whom are brand-spanking-new 10 to the practice of law. Like I said, I've got one 11 lawyer that's been practicing less than a month. 12 I've got another lawyer who took the February bar, 13 got the results in April or May or whenever, and 14 started with us over the summer, and she's a very 15 good lawyer. She is very new to the practice of 16 law, and I should be spending much more time 17 training those two lawyers and the other lawyers 18 that I have.</p> <p>19 Q. Are there other supervisors in the office 20 who are responsible for supervising those two 21 younger attorneys?</p> <p>22 A. I'm the only supervisor in the Area 19 23 office. We do have -- from time to time, there's 24 some informal mentoring that goes on. More 25 experienced lawyers will help the lesser -- not the</p>

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1 lesser but the more junior lawyers. As I mentioned,
 2 my most experienced lawyers really aren't that
 3 experienced.
 4 **Q. Right. Okay. So just to sum up this --**
 5 **these motions, there are about -- just doing -- not**
 6 **asking to do heavy math here, but if there are about**
 7 **2- to 300 motions to decline and/or appoint counsel,**
 8 **and there's 120-plus motions to -- for a caseload**
 9 **conference, and there are 50-ish motions to**
 10 **withdraw, my rough calculations are it's close to**
 11 **500 cases in which you've moved in one fashion or**
 12 **another to either get out -- not take a case or to**
 13 **withdraw from a case that you or your office is**
 14 **currently -- or would otherwise be representing a**
 15 **defendant?**
 16 A. That sounds about right.
 17 **Q. In fact, that number -- once your staff**
 18 **gets around to filing a motion to withdraw in the**
 19 **other 163 cases that you have is going to be 6- or**
 20 **700 cases?**
 21 A. Absolutely.
 22 **Q. Okay. And so, broadly speaking -- we can**
 23 **talk about some specific examples, but what is**
 24 **happening in those 500, soon to be 6- to 700 cases**
 25 **that you've moved to decline or withdraw from in**

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1 **location, sorry, but what's her -- what firm or**
 2 **organization does she work for?**
 3 A. Her firm is Carver & Michael in
 4 Jefferson City, Missouri.
 5 **Q. Okay. And was that appointment upon her**
 6 **request or was --**
 7 A. No.
 8 **Q. Okay. And do you think that -- was that a**
 9 **coincidence or -- as one of three lawyers not a**
 10 **coincidence?**
 11 A. I don't have personal knowledge as to the
 12 judge's thought process behind that.
 13 **Q. Okay.**
 14 A. We could speculate.
 15 **Q. Yes. Fair enough. Okay.**
 16 **Have any attorneys from the state -- you**
 17 **mentioned one of the options was appointing someone**
 18 **who is employed by the State of Missouri. To your**
 19 **knowledge, has anyone employed by the State of**
 20 **Missouri been appointed as a result of these**
 21 **motions?**
 22 A. Not to my knowledge.
 23 **Q. Okay. So other than the three private**
 24 **attorneys, no other attorneys, to your knowledge,**
 25 **have been appointed --**

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1 **some fashion?**
 2 A. On the cases in which we'd filed the
 3 motion to decline, most of those, as in all but a
 4 small number, either the courts ordered us -- denied
 5 the motion to decline and ordered us to represent.
 6 If we were ordered to do so, we did. Now, you know,
 7 my representation at this point is exceedingly
 8 limited. I mean -- you know? The -- let's see.
 9 There are motions for caseload conference that are
 10 sort of out there that are pending. You know,
 11 there's a hearing in Miller County on December 22.
 12 Most -- so what -- I mean, those are sort of out
 13 there and they're floating.
 14 The motions to decline representation,
 15 generally, those have either been assigned somebody
 16 from my office or some have become moot, either in
 17 that the individual goes pro se or that they retain
 18 a private lawyer. I can think of a couple of cases
 19 in which, in response to that motion, a judge did
 20 appoint a private lawyer. As I'm sitting here
 21 thinking about it, I can think of three private
 22 lawyers in Cole County who were appointed in
 23 response to motions that we filed, one of who was my
 24 wife.
 25 **Q. And where does your wife work -- not**

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1 A. Correct.
 2 **Q. -- as a result of these motions?**
 3 A. Correct. Judge Joyce is contemplating
 4 appointing private counsel but has been
 5 contemplating that for many months. Preceding the
 6 conference with her, if you can give me something
 7 that says I can do it, I'll do it. I did provide
 8 her a proposed order in May or June, and she did not
 9 make any appointments.
 10 **Q. Okay. And in those -- in the cases where**
 11 **you or your office is entering appearances over an**
 12 **objection, are you then engaging in active**
 13 **representation of those clients or simply entering**
 14 **an appearance and waiting until your office has some**
 15 **time to actually work on those cases?**
 16 A. Well -- I mean, if we're ordered to
 17 represent, we're going to do the level best that we
 18 can. I mean, understand right now my level best, I
 19 would rate as pretty terrible. The -- there are
 20 times where we've been ordered by the court to
 21 enter, and I've entered, but I really haven't been
 22 able to do anything with the case. And as another
 23 lawyer in my office was able to take on additional
 24 cases, I would then reassign that case to the lawyer
 25 that was actually able to work on the thing. So

29 (Pages 113 to 116)

<p style="text-align: right;">Page 117</p> <p>1 that, I know -- that has happened, certainly, a 2 number of times. Other times, you know, in -- for 3 example, in Miller County, I'm the only lawyer 4 taking new cases in Miller County, so I'm simply not 5 going to be reassigning it to anybody else. If I'm 6 ordered to represent over my objection, I will file 7 an entry; I will do the best I can, but, you know -- 8 I mean, right now, active representation, a client 9 may sit in jail for two months before I can get down 10 to see them. I mean, I don't consider that active 11 representation. It's not a willful refusal thing on 12 my part; it's -- if you look at the list of people 13 that I need to see and their corresponding court 14 dates, I -- you know, it -- it's going to take 15 forever for me to get to people.</p> <p>16 Q. And as you described, it's not just 17 meeting with your clients; it's also doing all of 18 the investigative work that would be needed on any 19 individual case. You're unable to do that either?</p> <p>20 A. Oh, absolutely. Or legal research or 21 filing motions or -- you know, there's so many 22 things. In Miller County, our judges tend to fix 23 fairly high bonds, but they will consider, like, a 24 furlough for treatment, so if your client wants to 25 go to in-patient treatment for drugs or alcohol or</p>	<p style="text-align: right;">Page 119</p> <p>1 they don't take that approach, then they sit in jail 2 that much longer until I can get around to doing the 3 work that needs to be done. Miller County is one of 4 the counties that will impose payment of a board 5 bill as a condition of probation. So every day that 6 they sit in jail, they're getting a bill for 38 7 bucks a day. And if they sit in jail for six months 8 because it takes me that long to work on the case, 9 that's -- \$38 times 180 days, that's going to be 10 added to their board bill, and, of course, my 11 clients are completely destitute. If they're 12 free -- well, whether they're free or whether 13 they're in jail -- you know, a lot of times our 14 clients, their life -- their whole life is on hold 15 because of the criminal charges that they're facing. 16 Obviously, if they're in jail, they're at risk of 17 losing their housing, their car is likely to get 18 repo'd, they may lose custody of their kids, they're 19 likely to lose their job. When the landlord goes 20 and evicts them, they're just going to throw all of 21 their stuff out in the street; there's no one to 22 pick it up you know; it's all going to get taken. 23 So when a client, after sitting in jail four to six 24 to 12 months or whatever, and they come out and they 25 have absolutely nothing, I think they're much more</p>
<p style="text-align: right;">Page 118</p> <p>1 what have you -- which is fine, except that my 2 ability to coordinate that is -- I mean, it's 3 virtually zero. Basically, I dedicate it to a staff 4 member who has got other responsibilities, and she 5 does the best that she can. That's -- you know, 6 there are clients who have simply asked the family 7 to do it because their family will do it faster. 8 Even when they get a furlough, there have been dates 9 that they have not been able to get to simply 10 because I can't get a motion in front of the judge 11 that fast. You know, getting and reviewing full 12 discovery. On my desk, I've got a stack of CDs and 13 DVDs that have been sitting there for a couple of 14 weeks; haven't looked at them, don't know what's on 15 them. Not going to have a chance to look at them 16 anytime soon. I mean, any of the substantive legal 17 work that I should be doing, right now, there isn't 18 time to get it done.</p> <p>19 Q. And that's the -- what are the effects of 20 continuances and delays and cases on the individual 21 defendants and their cases?</p> <p>22 A. Well -- I mean, if they're in jail -- 23 we're already seeing in Miller County people saying, 24 Forget it, I don't want a public defender; I'll just 25 go to prison pro se; I'll just represent myself. If</p>	<p style="text-align: right;">Page 120</p> <p>1 likely to get back into trouble and reoffend, and it 2 makes it that much harder for them -- if they're 3 granted probation, it's going to make it that much 4 harder to succeed on probation. You know, if 5 they're not in custody, a lot of times -- again, the 6 case has dramatic effect on them in that -- you 7 know, in Missouri, everything is -- all of our court 8 records are all in Case.net; it's on the Internet. 9 You know, a lot of employers have caught on to that, 10 and when an employer sees that guy has got a charge 11 for possession of a controlled substance, that is 12 going to impact the accused's employment prospects, 13 even though they're presumed innocent while they're 14 going to court on the charge. You know, right now 15 drug tests at the crime lab are taking -- I don't 16 know -- eight to 12 months for the drug test to get 17 complete. You know, you set a trial in Miller 18 County right now, the trial is going to be in the 19 summer of 2018. And, you know, you throw in an 20 overloaded public defender in all of this, you know, 21 for our client -- I mean, just that pending charge, 22 for it to go on that long, 18 months, has a horrible 23 dramatic effect. I mean, it can affect the custody 24 of their kids; it can affect -- may get kicked out 25 of public housing, if they're in public housing; it</p>

30 (Pages 117 to 120)

<p style="text-align: right;">Page 121</p> <p>1 may affect their job. You know -- and they've got 2 to show up for all of these court dates. In some 3 counties, they require bond supervision. So in 4 addition to showing up to court dates, they may have 5 to show up at a private probation office every week 6 and pay a supervision fee and -- you know, 7 obviously, if transportation is hard, it's going to 8 be difficult to do that. Man -- I mean, you know, 9 the -- you know, the consequences that are -- 10 there's a huge list of the consequences, whether 11 you're in jail or not, you know, just because of the 12 delay associated with the public defender's office. 13 So I don't even know if I -- I started 14 talking, and then I lost track of your original 15 question. I apologize. 16 Q. No, no. That's -- so those are all 17 tremendous personal consequences that these 18 individuals can face, and then the other piece I'm 19 hoping you can speak to is what consequences it has 20 for their legal case continuance of months or years, 21 in terms of the evidence and witnesses and all of 22 those things. 23 A. Well, if it takes me two months to get the 24 client in the county jail, and there's a video 25 recording that they think is important to their case</p>	<p style="text-align: right;">Page 123</p> <p>1 it and they find that they're going to be unable to 2 do that, we're going to be up the creek without a 3 paddle. That is a very important part of this case, 4 but we have no ability to get any additional 5 samples. I mean, that -- you know, just over and 6 above the legal consequences of witnesses going into 7 the wind or video being lost. You know, this one 8 client, if the blood is too old to test, it's going 9 to be a real problem in the case. 10 Q. And what charge is that individual facing? 11 A. Murder. 12 Q. You mentioned individual -- the other 13 thing that is a result of these continuances and 14 delays these individuals deciding to take plea deals 15 pro se and go to prison rather than waiting longer 16 for representation. It sounds like you're aware of 17 multiple cases where that's happened. 18 A. Yes. Yes. 19 Q. Okay. 20 A. And even in Miller County now, we're 21 seeing some applicants -- some people come into 22 court, and in lieu of filling out a public defender 23 application, they say, Judge, I just want to 24 represent myself. So even before I'm filing a 25 caseload conference motion in some cases, people are</p>
<p style="text-align: right;">Page 122</p> <p>1 from the quickie store or from Walmart or from what 2 have you, you know, most businesses only hold onto 3 those videos for so long. If I don't contact them, 4 you know, shortly after the thing, it may be erased 5 and rerecorded over. So there's certainly the 6 possibility that, you know, material evidence on the 7 case could be lost. I've got a case right now where 8 it's a very important part of the case that blood be 9 tested. Preceding the -- I -- well, let me back up 10 to the beginning. 11 It's a serious charge. I had to find an 12 expert -- took me forever because of my schedule and 13 because there's a shortage in this specialty, but 14 you put the two together, it took me six months to 15 find an expert on the case, possibly longer. And 16 then in talking to the expert, we identified, Hey, 17 there's blood that needs to be tested, then we had 18 to find a lab to test it. The lab that we found to 19 test it, by the time I got done playing phone tag 20 with the people I needed to talk to, told me, You 21 know what, at this point, blood is going to be too 22 old; can't test it. As the thing stands now, we 23 think we have found another lab who can work with 24 the sample and then run the test that we need to be 25 run, but, frankly, if for some reason they get into</p>	<p style="text-align: right;">Page 124</p> <p>1 saying, You know what, I'm not even going to go 2 there. 3 Q. And is that because they've heard about 4 the delays in public defender representation? 5 A. Most of the Miller County jail has 6 received from me a motion to withdraw citing my 7 caseload, a motion to decline representation citing 8 my caseload, or a motion for caseload conference, 9 and there's been a good amount of media about the 10 thing. So between all of those sources, they're 11 certainly aware of the situation. 12 Q. And do these individuals representing 13 themselves and/or negotiating plea deals pro se to 14 go to prison, does that raise sixth-amendment 15 concerns for you as a public defender? 16 A. Oh, absolutely. And, frankly, the cases 17 where I'm in them and representing people now. 18 Q. And that all stems from the case and work 19 overload that you and your office is facing? 20 A. Yes. 21 MR. SCHERZER: Do you want to take a break 22 for a little while? 23 THE WITNESS: We can. And can I see if 24 the affidavits came in, if you'd like. 25 MR. SCHERZER: Okay.</p>

<p style="text-align: right;">Page 125</p> <p>1 VIDEOGRAPHER: The time is 12:21 p.m. and 2 we're off the record. 3 (A lunch recess was taken.) 4 VIDEOGRAPHER: The time is 1:03 p.m. and 5 we're back on the record. 6 Q. (By Mr. Scherzer) Mr. Carver, I want to 7 just return to Plaintiff's Exhibit 18 that we had 8 been discussing, and we'll move through it quickly 9 because we have a lot more to discuss, but if you 10 could turn to that page 39420 that we were looking 11 at previously, and let me know when you've gotten 12 there. 13 A. Okay. 14 Q. So that e-mail that you had been 15 referencing previously, the e-mail from 16 Judge Richardson to you, the bottom of that page, do 17 you see that e-mail? 18 A. From Judge Richardson to me? 19 Q. Yes. 20 A. Yes. 21 Q. Which is dated December 29th, 2016, at 22 10:16 a.m.? 23 A. Yes. 24 Q. And the subject, again, is Re: Public 25 defender struggles; is that right?</p>	<p style="text-align: right;">Page 127</p> <p>1 A. Yes. 2 Q. Okay. And we've discussed already the 3 problems that can result as a result of all of those 4 continuances, but -- 5 A. Right. 6 Q. -- worst -- you know, the best of the 7 worst possible worlds, perhaps? 8 A. Right. 9 Q. Okay. And then just turning to the e-mail 10 above that on that same page, 39420. 11 A. Yes. 12 Q. Which, I guess, if you turn to the page 13 before, 39419, you see at the bottom, that looks 14 like it's from Ben Winfrey? 15 A. Yes. 16 Q. And can you remind us who Ben Winfrey is? 17 A. The Miller County prosecutor. 18 Q. And it's addressed -- it's addressed to 19 many or all of the same individuals who were on your 20 initial e-mail? 21 A. Yes. 22 Q. And it was sent -- if you're looking at 23 39419, that same day, December 29, 2016? 24 A. Yes. 25 Q. Okay. And can you read the second</p>
<p style="text-align: right;">Page 126</p> <p>1 A. Yes. 2 Q. And it looks like it's in response to the 3 e-mail that we had been reading earlier? It's her 4 response to your e-mail? 5 A. Yes. 6 Q. Okay. And, in fact, she wrote back right 7 away because you sent that e-mail at 9:54 a.m., and 8 she responded 22 minutes later; is that right? 9 A. Yes. That's about right. 10 Q. Okay. So just if you could read the 11 sentence that begins sort of on the four or five 12 lines up from the bottom, the sentence, "We all know 13 that." 14 A. "We all know that on any given jury week, 15 there is no way the public defender can prepare for 16 the number of cases that get set, so at least for 17 me, continuances will be pretty freely given." 18 Q. Okay. So it seems like the response -- 19 and I won't ask you to read the whole e-mail into 20 the record, given the time, but the response from 21 Judge Richardson, is it fair to sum up, was, I agree 22 you're too busy and -- but I want you to at least 23 file appearances, and I'll give you as many 24 continuances as you need? Is that a fair summary of 25 her response?</p>	<p style="text-align: right;">Page 128</p> <p>1 paragraph, "I do not -- " or sorry -- can you read 2 the first clause, "In a related vein"? 3 A. "In a related vein of woe is us, the 4 Miller County prosecutor's office regrets to 5 announce the resignation of assistant prosecutor 6 Derek K, who has been granted a very gracious offer 7 by the Morgan County prosecuting attorney to vastly 8 improve his situation in a county with less crime 9 than Miller. 10 Q. And can you read the next paragraph? 11 A. Sure. 12 "I do not have an ABA-designated study. 13 The ABA does not care enough to perform a study 14 about whether the prosecution is adequately funded 15 to perform its official duties as the minister of 16 justice. Nonetheless, this prosecutor has 17 determined, based upon my expert opinion and 18 anecdotal evidence, that my office is at 19 approximately 100,000 percent, our recommended 20 carrying capacity by any standard. Please keep this 21 in mind as we venture out together in the new year, 22 and please be understanding of the state's own 23 limitations in counties other than Morgan." 24 Q. Okay. And then if you could turn to 25 39419, a page prior to that, there's another e-mail</p>

32 (Pages 125 to 128)

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1 from Ben Winfrey just to you later in the day that
2 same day, six or seven hours later, where he says he
3 was joking and says I was not mocking or minimizing
4 your problem, we have both asked to do more with
5 less; is that right?

6 A. Yes.

7 Q. Okay. And then if you could turn to
8 39416. The bottom of that page, it looks like
9 there's an e-mail from Judge Schollmeyer to
10 Ashley Lute?

11 A. Yes.

12 Q. And it looks like just above that it says
13 Ashley Lute is associate circuit judge's secretary;
14 is that right?

15 A. Yes. I mean, I think officially she's one
16 of the court clerks, but she serves as his
17 secretary.

18 Q. Okay. And she forwarded that e-mail,
19 also, to you on December 29th at 4:26; is that
20 right?

21 A. Yes.

22 Q. And so, essentially, it looks like -- oh,
23 I see. Sorry. Because on -- just -- on 39417, it
24 looks like you ended up writing to Ashley Lute
25 because your e-mail to the judge directly bounced

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1 A. That's how I read that, yes.

2 Q. Okay. And are you aware of that
3 particular statutory change or ...

4 A. In memory serves, I think it's just under
5 a certain dollar amount.

6 Q. Okay.

7 A. I think it's less than 150 bucks.

8 Q. Okay. And so when he says, "I can't
9 appoint," what is he referring to?

10 A. So when he says -- if it's -- if there is
11 no risk of incarceration -- you know, there's
12 certain statutes that say you can get a fine only
13 under Chapter 600; they are not -- persons charged
14 with that are not eligible for a public defender.

15 Q. Okay. If they're not -- if there's no
16 possibility of jail time, they're ineligible for a
17 public defender?

18 A. Correct.

19 Q. Okay.

20 A. Tangentially -- I don't mean to
21 interrupt -- I just got a text from my office
22 indicating they tried to send an e-mail to the staff
23 up front, so I don't know if someone wants to step
24 out and check on that or not.

25 MR. SCHERZER: Sure. Yeah. We can take a

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1 back; is that right?

2 A. Correct.

3 Q. Do you see that sort of at the top?

4 A. Yes.

5 Q. So then, essentially, this e-mail from
6 Judge Schollmeyer was to you, just passed through
7 Ashley Lute; right?

8 A. Correct.

9 Q. Okay. And he said -- can you read us what
10 he said -- his short e-mail?

11 A. "I'm not going to appoint your office in
12 Class A DWs, if they're eligible for reinstatement,
13 until I see that they aren't going to get
14 reinstated."

15 "DWR" is -- tangentially, it's driving
16 while revoked.

17 Q. Okay.

18 A. "Also, at the first of the year,
19 first-offense stealing will have no possibility of
20 jail, so I can't appoint. These things might help a
21 little."

22 Q. Okay. And so when he says -- so is that
23 referring to -- there was some statutory change in
24 January 2017 about first -- the first offense for
25 stealing; is that right?

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1 two-second break to do that.

2 VIDEOGRAPHER: The time is 1:12 p.m., and
3 we're off the record.

4 (A recess was taken.)

5 VIDEOGRAPHER: The time is 1:16 p.m., and
6 we're back on the record.

7 Q. (By Mr. Scherzer) Okay. And then just the
8 last e-mail in this chain, if you don't mind,
9 Mr. Carver, that starts on that page 39415. At the
10 bottom of that page -- sorry. When I said the first
11 e-mail, the first e-mail, if you look at the top, is
12 an e-mail from you to Ms. Shipma in October of this
13 year forwarding this e-mail chain; is that right?

14 A. Yes.

15 Q. Okay. But the second e-mail and the first
16 one, you know, in this chain from -- in 2016, is
17 this e-mail from -- at the bottom of the page on
18 39415 from Daniel Green to you?

19 A. Yes.

20 Q. And can you remind us who Daniel Green is?

21 A. Circuit judge in Cole County.

22 Q. Okay. And if you turn to the -- to 39416
23 at the top of the page, can you just read a few
24 sentences that start with, "At any rate" on the
25 second line there? "At any rate I would ..."

33 (Pages 129 to 132)

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1 A. "At any rate, I would go so far as to
2 suggest you figure out the maximum number of active
3 cases for your folks, and we call these green cases.
4 The rest we call red. When the case comes on the
5 docket, and I ask you what action, you respond with,
6 This is a red case, and we continue for 90 days, or,
7 This is a green case, and we set it accordingly."

8 **Q. Okay. And is that -- has that been**
9 **happening, the green or red or some similar type of**
10 **code word?**

11 A. No.

12 **Q. Okay. But what Judge Green is suggesting**
13 **here is -- was, at least, that you set up two**
14 **classes of cases, one class of which you would just**
15 **continue, perhaps, ad infinitum, but at least for 90**
16 **day clips at a time?**

17 A. Correct.

18 **Q. All right. I'm done with that exhibit for**
19 **now. I want to turn now to 8286.**

20 (Deposition Exhibit No. 19 was marked for
21 identification.)

22 **Q. (By Mr. Scherzer) So, Mr. Carver, I'm**
23 **showing you what's been marked as Exhibit 19. Let**
24 **me know when you've had a chance to glance at it.**

25 A. Yes.

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1 ability to assign these cases internally within my
2 office. Frankly, I don't know what my supervisors
3 will tell you. They don't have extra lawyers on
4 hand to take additional cases, and I'm told that
5 they are receiving notices of appointment from local
6 public defender offices all over the state. I
7 assume it may take some time to receive a response.
8 Your patience is much appreciated. If you do not
9 receive any response after you have ordered the
10 public defender to provide representation, feel free
11 to let me know. Tangentially, I will remind you
12 under State ex rel. Robinson v. Franklin, the court
13 cannot appoint specific public defenders; the court
14 can only order the agency to provide representation.
15 As always --"

16 It's supposed to say "feel free," but
17 there's a typographical error --

18 "-- feel free to get in touch with
19 questions or concerns. Thanks, Justin."

20 **Q. And what, if any, response did you receive**
21 **as a result of this e-mail?**

22 A. From the courts? None.

23 **Q. Okay.**

24 A. I sent a number of cases to my supervisor,
25 Ellen Blau, and I think that she asked -- I cc'd in

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1 **Q. Okay. Do you recognize this?**

2 A. Yes.

3 **Q. And what is it?**

4 A. This is an e-mail thread. The substantive
5 e-mail would appear on Bates stamp 39414, which is
6 an e-mail I'd sent to the courts in October of this
7 year, and it wasn't addressed to all of the judges
8 that I practice in front of, but it was addressed to
9 those who had been continuing to order us to
10 represent, even after we had been telling them we're
11 drowning and we can't take more cases.

12 **Q. Got it. So just to that subset of judges**
13 **who were ordering you to continue representing,**
14 **despite your concerns about your ability to**
15 **effectively represent those clients they were**
16 **ordering you to represent?**

17 A. Correct.

18 **Q. Okay. And can you read us that e-mail on**
19 **39414?**

20 A. Sure.

21 "As you know, I have been filing motions
22 to appoint counsel for some time. In the event
23 those motions are overruled, I'm now sending notice
24 of the court's order to my supervisors with the
25 request that they respond. I simply do not have any

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1 other members of senior management on it. Sometime
2 later I got a call from Ms. Blau saying, Don't do
3 that anymore. We don't have any lawyers to give
4 these -- to assign these cases to.

5 **Q. Don't do what anymore? Sorry.**

6 A. Send the cases to the administrative
7 office with the request that they provide
8 representation.

9 **Q. Okay. So, initially, she told you to send**
10 **those -- to copy other individuals after you had**
11 **sent it, but eventually came back to you and saying**
12 **sending these cases to us is frivolous because we**
13 **have no one to take them?**

14 A. Correct.

15 **Q. And what did she suggest that you do**
16 **instead?**

17 A. Have evidentiary hearings on my motions to
18 decline representation or motions to withdraw.

19 **Q. Okay. And have you been able to have**
20 **those hearings?**

21 A. Yes.

22 **Q. Okay.**

23 A. And I've had zero success.

24 **Q. Okay. So tell us about that, if you**
25 **could.**

34 (Pages 133 to 136)

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<p style="text-align: right;">Page 137</p> <p>1 A. Sure. There was -- I can think of two 2 right now off of the top of my head, evidentiary 3 hearings on motions to decline representation and/or 4 motions to withdraw representation. One was in 5 Miller County in front of Judge Kaltenbronn where we 6 took up a number of cases simultaneously, as in -- 7 when I say "a number," I mean more than a dozen, 8 maybe two dozen -- cases in which essentially the 9 same issues was there, and I testified as to my 10 caseload and what I was able to do and what I was 11 not able to do. The judge overruled all of the 12 motions and ordered me to remain in the case or 13 enter into the case as the case may be. Likewise, 14 there was another hearing on a conflict case in 15 Laclede County in front of Judge Richardson where, 16 again, I testified and the judge ordered the public 17 defender to represent.</p> <p>18 Q. Okay. So -- and those are the only two 19 evidentiary hearings that you've had?</p> <p>20 A. That I can think of off of the top of my 21 head. There may have been more -- I want to say 22 there was at least one more in circuit court in 23 Miller County. I can't recall for sure for sure. 24 We've also had the case conference hearings in 25 Cole County. We had a hearing on motions to -- for</p>	<p style="text-align: right;">Page 139</p> <p>1 basically, the same things I told you to before. 2 You know, Judge Kaltenbronn in response to the 3 motion -- the evidentiary hearing basically said, 4 You know, look the real remedy is not judicial; the 5 real remedy is legislative. And he didn't feel like 6 he had any good options other than appointing the 7 public defender, was sort of what he articulated.</p> <p>8 Q. I'd like to just -- to close this loop 9 here, just return to Plaintiff's Exhibit 18 for one 10 second. When you have that in front of you, that's 11 the eight-page chain of e-mails.</p> <p>12 A. Okay.</p> <p>13 Q. On -- and going back to 39421 -- sorry. I 14 wanted to do this before the break, but I will just 15 come back to it quickly now.</p> <p>16 The four lines up from the bottom says -- 17 you read this earlier -- that, "Nonetheless, as a 18 supervisory lawyer, I have a specific ethical 19 obligation to monitor and control the caseloads of 20 my assistants."</p> <p>21 A. Yes.</p> <p>22 Q. "I simply can't keep assigning my lawyers 23 cases at the rate that I have been assigning them."</p> <p>24 A. Yes.</p> <p>25 Q. Can you just tell us a little bit more</p>
<p style="text-align: right;">Page 138</p> <p>1 the caseload conference in Miller County, and the 2 conference is scheduled in Miller County.</p> <p>3 Q. Okay. And what, if any, reasons or 4 rationales did the judges in these evidentiary 5 hearings give for denying your motions?</p> <p>6 A. In the Lebanon -- in the Laclede County 7 case -- I use Lebanon and Laclede County 8 interchangeably.</p> <p>9 Q. Right.</p> <p>10 A. In the Laclede County case, the judge 11 said, Well, I'm not ordering you to take it, 12 Mr. Carver; I'm just ordering the public defender to 13 take it. If your office can't do it, find another 14 public defender from another public defender office. 15 I talked to my boss, who told me there aren't any 16 other public defenders in any other public defender 17 offices that -- they're all overloaded, and because 18 of the division of labor, the case was my office's 19 case. It had initially started -- the reason it was 20 my case was it initially started in Miller County, 21 and the venue was changed to Laclede County, sort of 22 the administrative division of labor is it gets 23 assigned to the office in the county where the case 24 started. You know, in -- with regard to some of the 25 other things that courts have told me over time,</p>	<p style="text-align: right;">Page 140</p> <p>1 about that special ethical obligation that you have 2 as a supervisor?</p> <p>3 A. I'm obliged to make sure that all of my 4 lawyers practice consistent with Rule 4 of the 5 Missouri Supreme Court Rules. One of those rules 6 specifically, if you look at Comment 2 relating to 7 diligence, says that a lawyer's caseload must be 8 controlled so that they can practice each case 9 competently. Over and above that, if you look at 10 the rule relating to competence, competence is 11 knowledge and skill, but it's also preparation. 12 It's a conjunctive test. It's not sufficient -- you 13 are not competent if you have only knowledge and 14 skill but you do not do the preparation to provide 15 competent representation within the meaning of 16 Rule 4. You have to have the knowledge, the skill, 17 and the preparation. So those are just some -- sort 18 of some of the obligations that come to mind as you 19 ask that question.</p> <p>20 Q. So that's over and above your ethical 21 responsibilities to your own cases, you have these 22 additional ethical responsibilities as a supervisor?</p> <p>23 A. I have to make sure my lawyers are being 24 ethical in their practice as well.</p> <p>25 Q. Okay. And are the rules that you're</p>

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<p style="text-align: right;">Page 141</p> <p>1 referring to 4-1.3 is diligence -- is that --</p> <p>2 A. That sounds correct.</p> <p>3 Q. -- correct? Okay. And then 4-5.1 is</p> <p>4 responsibilities of partners, managers, and</p> <p>5 supervisory lawyers?</p> <p>6 A. That sounds correct, yes.</p> <p>7 Q. And does that -- does that rule say</p> <p>8 something to the effect of a lawyer having direct</p> <p>9 supervisory authority over another lawyer shall make</p> <p>10 reasonable efforts to ensure that the other lawyer</p> <p>11 conforms to the rules of professional conduct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And, in fact -- well, I'll just --</p> <p>14 let me just submit this quickly so I don't force you</p> <p>15 to try to guess on what the ...</p> <p>16 (Deposition Exhibit No. 20 was marked for</p> <p>17 identification.)</p> <p>18 A. Yes.</p> <p>19 Q. (By Mr. Scherzer) Do you recognize what I</p> <p>20 put in front of you as Exhibit 20?</p> <p>21 A. Yes.</p> <p>22 Q. And this is Rule 4-5.1?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see Letters -- C under that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Yes.</p> <p>2 A. -- when the thing was printed.</p> <p>3 Q. Yes.</p> <p>4 A. Setting aside those formatting errors,</p> <p>5 this would be appear to be a supplemental budget</p> <p>6 request relating to the public defender's office. I</p> <p>7 presume I have seen this at some point in time. I</p> <p>8 mean ...</p> <p>9 Q. And it's okay if not. I'm asking you</p> <p>10 about one specific page, which I'll refer to you.</p> <p>11 A. Okay.</p> <p>12 Q. But it does say -- although, yes, this is</p> <p>13 something in the file that has occurred, but on the</p> <p>14 front it says, "Supplemental --" what looks like</p> <p>15 "Supplemental Legislative Budget Request."</p> <p>16 A. Yes.</p> <p>17 Q. Is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Approved October 25th, 2017? Is that</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. And it says, "Michael Barrett, director."</p> <p>23 Underneath it has the Missouri State Public Defender</p> <p>24 commission seal?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. And it says, "A lawyer shall be</p> <p>2 responsible for another lawyer's violation of the</p> <p>3 rules of professional conduct if, one, the lawyer</p> <p>4 orders or with knowledge of the specific conduct</p> <p>5 ratifies the conduct involved?"</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And is that one of the things that</p> <p>8 you're talking about, about your special ethical</p> <p>9 responsibilities as a supervisor?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So, indeed, you could be ethically</p> <p>12 responsible for the conduct of your line attorneys</p> <p>13 if you either order or even ratify their conduct</p> <p>14 conducting ineffective for unethical representation</p> <p>15 of the defendants your office is assigned to</p> <p>16 represent; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I'd like to mark this as</p> <p>19 Plaintiff's Exhibit 21.</p> <p>20 (Deposition Exhibit No. 21 was marked for</p> <p>21 identification.)</p> <p>22 Q. (By Mr. Scherzer) Have you seen this</p> <p>23 document before, Mr. Carver?</p> <p>24 A. It looks like there's some formatting</p> <p>25 errors that may have occurred --</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Okay. So I just want to turn to the last</p> <p>2 page of that document, 38976.</p> <p>3 A. Okay.</p> <p>4 Q. And it says, "State Public Defender</p> <p>5 Cumulative caseload Metric Fiscal Year 2017" on the</p> <p>6 top. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it says, "Start date, July 1st, 2016,</p> <p>9 end date June 30th, 2017"?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And do you see it -- it looks like</p> <p>12 the 33 districts or areas in the Missouri State</p> <p>13 Public Defender System are listed here in rows.</p> <p>14 A. Yes.</p> <p>15 Q. And they're ranked 1 to 33 in the far</p> <p>16 right-hand column?</p> <p>17 A. Yes.</p> <p>18 Q. And this is a percent of capacity chart</p> <p>19 for the 33 area offices of the Missouri public</p> <p>20 defender system? Is that a fair --</p> <p>21 A. Yes.</p> <p>22 Q. -- statement?</p> <p>23 A. Yes. Based on the RubinBrown metric.</p> <p>24 Q. Based on the RubinBrown metric. Okay.</p> <p>25 And so it has attorney time and capacity, and then</p>

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<p style="text-align: right;">Page 145</p> <p>1 in that second-to-last column, it has percent of</p> <p>2 capacity; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see Area 19, Jefferson City, in</p> <p>5 this chart?</p> <p>6 A. I do.</p> <p>7 Q. Okay. And if you go across -- it says,</p> <p>8 "Percent of capacity, 210.3 percent"?</p> <p>9 A. Yes.</p> <p>10 Q. And can you tell us what that means, to</p> <p>11 your understanding?</p> <p>12 A. That would mean that we would have</p> <p>13 210 percent of open cases as compared to the number</p> <p>14 of lawyers to handle those cases, and that</p> <p>15 210 percent presumes that the office is fully</p> <p>16 staffed with all of its lawyers, and as of</p> <p>17 June 30, 2017, we were not. We had actually been</p> <p>18 shorthanded for all of calendar year 2017. And so</p> <p>19 that -- you know, if you based our percentage based</p> <p>20 on the number of lawyers we had on hand, it would</p> <p>21 change and it would probably increase, but what that</p> <p>22 number would be, I couldn't tell you off the top of</p> <p>23 my head.</p> <p>24 Q. And it would certainly increase because</p> <p>25 you have six on staff instead of seven?</p>	<p style="text-align: right;">Page 147</p> <p>1 Q. Okay. So that's -- and you see at the</p> <p>2 bottom here there are 33 areas or districts in the</p> <p>3 MSPD system; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. So your -- so for fiscal year 2017, your</p> <p>6 office was 28th out of 33 offices; is that correct?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. Okay. So even with this 210 percent</p> <p>9 overload and all of the problems that you've been</p> <p>10 identifying, 27 of the 33 offices have a greater</p> <p>11 numerical overload than your office; is that</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And, perhaps, that -- might that explain</p> <p>15 Ellen Blau's response that -- and your previous</p> <p>16 acknowledgment there aren't other attorneys to come</p> <p>17 in and -- as knights in shining armor to represent</p> <p>18 these individuals in your district?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. I'd like to turn quickly to what</p> <p>21 I'm going to mark as Plaintiff's Exhibit 22.</p> <p>22 (Deposition Exhibit No. 22 was marked for</p> <p>23 identification.)</p> <p>24 A. Yes.</p> <p>25 Q. Do you recognize this document?</p>
<p style="text-align: right;">Page 146</p> <p>1 A. Agreed.</p> <p>2 Q. So it would increase one-tenth or</p> <p>3 one-sixth or whatever.</p> <p>4 A. However that math works out.</p> <p>5 Q. Some complicated fraction.</p> <p>6 A. Right.</p> <p>7 Q. Okay. And so, effectively, it would be</p> <p>8 fair to say what this means is that your office</p> <p>9 would be twice as many attorneys as it currently is</p> <p>10 even authorized for -- much less has, but is even</p> <p>11 authorized for in order to adequately represent the</p> <p>12 defendants to whom it's been assigned to represent?</p> <p>13 A. At least twice, yes.</p> <p>14 Q. Okay. And is that consistent with your</p> <p>15 experience and understanding, having worked in the</p> <p>16 system for 15 years and been in charge of this</p> <p>17 office for three-plus years?</p> <p>18 A. Yes.</p> <p>19 Q. That your evaluation is you would need</p> <p>20 twice as many lawyers?</p> <p>21 A. Yes.</p> <p>22 Q. And then do you see on that last column</p> <p>23 where I mention before the rank Jefferson City --</p> <p>24 can you tell us what rank Jefferson City is?</p> <p>25 A. Twenty-eight.</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. This is a report of the Senate interim</p> <p>4 committee following a series of hearings at the</p> <p>5 state capitol.</p> <p>6 Q. A series of hearings on?</p> <p>7 A. Public defender caseload, staffing status</p> <p>8 of the public defender's office.</p> <p>9 Q. Okay. And do you see the date on the</p> <p>10 bottom of this cover page?</p> <p>11 A. The report was prepared, according to the</p> <p>12 cover page, in January of 2007. The hearings were</p> <p>13 in the summer of 2006.</p> <p>14 Q. And do you recall these hearings?</p> <p>15 A. I do.</p> <p>16 Q. Okay. And is that because you testified</p> <p>17 at at least one of them?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So if you go to -- well, if you</p> <p>20 look very briefly at 18328.</p> <p>21 A. Yes.</p> <p>22 Q. Do you see that? Is it says, "Summary of</p> <p>23 the August 25th meeting."</p> <p>24 A. Yes.</p> <p>25 Q. And it talks about August 25th, 2006.</p>

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1 A. Yes.
2 **Q. And if you turn to 18330.**
3 A. Yes.
4 **Q. Which looks like it's describing that same**
5 **meeting.**
6 A. Yes.
7 **Q. Do you see your name there?**
8 A. I do. It lists me as an assistant public
9 defender. My memory is that I was the district
10 defender at the time.
11 **Q. Right. And actually the first line does**
12 **say, "As a supervising attorney in his office."**
13 A. Uh-huh.
14 **Q. So that was when you were -- you testified**
15 **as the district defender in the Fulton office; is**
16 **that right?**
17 A. Yes.
18 **Q. And this was 11 -- almost 11 and a half**
19 **years ago; is that right?**
20 A. Yes.
21 **Q. Okay. And can you read the first sentence**
22 **under your name?**
23 A. "As the supervising attorney in his
24 office, Mr. Carver's testimony focused on the
25 difficulties of maintaining his own heavy caseload

1 helped. And I think they did allocate us an
2 additional number of lawyers or support staff
3 statewide. You know, I don't know -- the little bit
4 that the Senate interim committee did -- it's sort
5 of a Band-Aid on a gushing wound that did not fix
6 the problem. There was probably -- there was
7 certainly some help that came out of the Senate
8 interim committee. Now, whether the additional
9 resources that we got out of that process, whether
10 that has kept pace with sort of the change in our
11 caseload, that, I couldn't speak to. And, frankly,
12 whether the pay raises now would keep pace with
13 inflation, that, I couldn't speak to either. We're
14 still struggling with the same problems we had back
15 then, I mean, is sort of the short summary. This
16 did not fix or end the problem by any means; it just
17 placed a Band-Aid on a very serious wound.
18 **Q. Okay. And at the end of that first**
19 **paragraph under your name, it says, "Last year**
20 **office closed 1,664 cases, including 298 cases**
21 **closed by Mr. Carver."**
22 A. Yes.
23 **Q. And what does that mean? Just -- can you**
24 **tell us what the "298 cases closed by you" means.**
25 A. That means I pled or tried some or

1 while attempting to mentor, supervise, and evaluate
2 the other attorneys in his office."
3 **Q. Okay. So fair to say this is a problem**
4 **that you testified to the Senate about yourself 11**
5 **and a half years ago?**
6 A. Correct.
7 **Q. Okay. And much the same problem that**
8 **you're describing today?**
9 A. Yes.
10 **Q. You're laughing, and I don't blame you.**
11 **Why is it that you're laughing?**
12 A. It's -- it has been a problem that has
13 persisted the entire time I've been in the public
14 defender's office. And it's not funny. It's been
15 going on for forever.
16 **Q. Okay. And you've testified to the**
17 **Senate -- I mean, other individuals here testifying**
18 **as well, but you, yourself, testified to the Senate**
19 **about this 11 and a half years ago?**
20 A. Yes.
21 **Q. And, if anything, would you say -- has the**
22 **problem gotten better or worse since that time?**
23 A. You know, one of the results -- so one of
24 the results of the Senate interim committee is that
25 they did raise the salaries some, which certainly

1 something -- there was some dismissals, but that
2 would be the number of cases that I would have
3 closed that year.
4 **Q. Okay. And then on the -- can you just**
5 **read the second paragraph of that testimony?**
6 A. Sure.
7 "Mr. Carver expressed the frustration of
8 trying to balance management and representing
9 clients. If he focuses on his own cases and does
10 not supervise the new attorneys, clients suffer from
11 their inexperience. If he focuses on management
12 issues, his own clients do not receive proper
13 representation; however, Mr. Carver expressed that
14 proper management and feedback are essential
15 elements that would help with attorney retention and
16 improved performance."
17 **Q. Okay. And do you still agree with those**
18 **sentiments today?**
19 A. Absolutely.
20 **Q. And, in fact, is that the same sort of**
21 **internal conflict that you face as a supervisor,**
22 **trying to do what's best for your clients and for**
23 **your attorneys and the clients that those attorneys**
24 **represent that you're facing every day now in**
25 **Area 19?**

<p style="text-align: right;">Page 153</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And, again, this is something you</p> <p>3 testified to the Senate about 11 and a half years</p> <p>4 ago; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. All right. I'd like to turn to</p> <p>7 what I'll mark as Exhibit 23.</p> <p>8 (Deposition Exhibit No. 23 was marked for</p> <p>9 identification.)</p> <p>10 Q. (By Mr. Scherzer) Plaintiff's Exhibit 23,</p> <p>11 do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. This would be one form of the motions to</p> <p>15 decline representation and to -- you know, to</p> <p>16 appoint counsel that I spoke of earlier.</p> <p>17 Q. Okay. I know this looks like it was in a</p> <p>18 particular case, the case of State of Missouri v.</p> <p>19 Quentin Williams; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And who drafted this -- who wrote and</p> <p>22 filed this motion?</p> <p>23 A. I did. Much of it I borrowed from</p> <p>24 something somebody else did previously, but I did</p> <p>25 this, and I also did all of the other motions I've</p>	<p style="text-align: right;">Page 155</p> <p>1 motion was filed. After the first hearing on the</p> <p>2 case conference and before the second, one of the</p> <p>3 lawyers in my office was able to take additional</p> <p>4 cases, and so Mr. Williams' case was assigned to the</p> <p>5 lawyer who then entered and began representation.</p> <p>6 Q. Okay. And we'll get to that a little bit</p> <p>7 more in a minute, that conference.</p> <p>8 So was this -- is this essentially a --</p> <p>9 this motion -- because you mentioned you filed</p> <p>10 hundreds of these types of motions, is this, then,</p> <p>11 what became a form motion that you filed in several</p> <p>12 different cases?</p> <p>13 A. It was a template that we set up in the</p> <p>14 computer, and any time that the situation arose</p> <p>15 where we needed it, we just pulled up the template</p> <p>16 and used it.</p> <p>17 Q. And was this the filings of this kind of</p> <p>18 motion -- the motions that you mentioned filing in</p> <p>19 early 2017; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. And through middle 2017.</p> <p>23 Q. Right.</p> <p>24 A. Up until Hazel v. Meyer, the writ decision</p> <p>25 was decided by the Missouri Supreme Court, then we</p>
<p style="text-align: right;">Page 154</p> <p>1 been alluding to earlier.</p> <p>2 Q. Okay. And can you read just the first --</p> <p>3 well, the first sentence but just until the -- until</p> <p>4 451, so the one, two, three, four -- the first five</p> <p>5 and a half lines?</p> <p>6 A. Yes.</p> <p>7 "Comes now Justin Carver, district</p> <p>8 defender of Area 19 of the Missouri State public</p> <p>9 Defender System, and informs the court that he has</p> <p>10 found the defendant to be indigent but that he has</p> <p>11 no lawyers able to take this case, as every lawyer</p> <p>12 in the Area 19 office is already overloaded with</p> <p>13 cases and cannot accept additional cases without</p> <p>14 violating the Missouri Rules of Professional Conduct</p> <p>15 4-1.1, 4-1.3, 4-1.4, 4-1.7, 4-1.16(a), and 4-5.1."</p> <p>16 Q. Okay. And, essentially, you asked the</p> <p>17 court to decline -- to allow you to decline</p> <p>18 representation and to appoint a lawyer employed by</p> <p>19 the State of Missouri or some other remedy to get</p> <p>20 the person adequate representation?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the result of that motion?</p> <p>23 A. It was neither granted nor denied.</p> <p>24 Mr. Williams is the gentleman who we had a case</p> <p>25 conference on in Cole County sometime after this</p>	<p style="text-align: right;">Page 156</p> <p>1 switched to the case conference motions.</p> <p>2 Q. Okay. I'll show you one of those motions.</p> <p>3 I'm marking this as Plaintiff's Exhibit 24.</p> <p>4 (Deposition Exhibit No. 24 was marked for</p> <p>5 identification.)</p> <p>6 Q. (By Mr. Scherzer) And do you recognize</p> <p>7 this -- what I've marked as Plaintiff's Exhibit 24?</p> <p>8 A. Yes.</p> <p>9 Q. And what is it?</p> <p>10 A. This was a motion requesting conference to</p> <p>11 discuss caseload issues that was filed on behalf --</p> <p>12 on Mr. Williams' case.</p> <p>13 Q. Okay. And so that's the -- this is the</p> <p>14 motion that you -- the type of motion that you</p> <p>15 mentioned previously that you're now filing instead</p> <p>16 of this motion to decline representation; is that</p> <p>17 right?</p> <p>18 A. Correct. My memory is that, also, in</p> <p>19 conjunction with this memory on Mr. Williams' case,</p> <p>20 there were suggestions and support that was filed.</p> <p>21 After his case went to conference, we took the</p> <p>22 motion requesting conference and the suggestions and</p> <p>23 condensed them into one big giant motion requesting</p> <p>24 conference that we've been using since.</p> <p>25 Q. Okay. And I'll show you what's been --</p>

39 (Pages 153 to 156)

<p style="text-align: right;">Page 157</p> <p>1 what I'll mark as Plaintiff's Exhibit 25. 2 (Deposition Exhibit No. 25 was marked for 3 identification.) 4 Q. (By Mr. Scherzer) And do you recognize 5 this document? 6 A. I do. This was the suggestions and 7 support. 8 Q. The one that you were just referring to? 9 A. Yes. 10 Q. And this has now become a form that you're 11 now attaching to Plaintiff's Exhibit 24, the 12 motions, and filing in many of your new cases? 13 A. We've condensed Exhibits 24 and 25 into 14 one big giant filing and using the one big giant 15 filing. 16 Q. And, again, are you filing this in every 17 new case or just in the cases that -- once you've 18 allocated however many cases your attorneys can take 19 at any given time, then in each additional case 20 after that, you're filing this motion? 21 A. We're filing it only in the additional 22 cases that we feel that we cannot ethically take. 23 Q. Okay. And you're determining that -- 24 which cases you -- when you've reached that point at 25 any given moment by consulting with the attorneys in</p>	<p style="text-align: right;">Page 159</p> <p>1 about the other nonattorney staff in your office. 2 You mention support staff -- at one point, you 3 mentioned an investigator. If you could just tell 4 me what additional staff there is other than 5 attorneys in your office. 6 A. I have three support staff members. One, 7 the official job title is office support assistant. 8 I have two legal assistants. In addition to those 9 three support staff members, there is one 10 investigator. 11 Q. Okay. And that investigator was on leave 12 but is now back from leave? 13 A. Went out October 1 or very early October 14 and is due to come back on January 2, I think, is 15 the date he comes back. 16 Q. Okay. And so currently in the office, you 17 don't have any investigator? 18 A. Right now we have a legal assistant who 19 had other responsibilities who is attempting to fill 20 that gap and to serve subpoenas and visit crime 21 scenes and do evidence views and that kind, and -- 22 yes. Our investigator is out, so we're trying to 23 cover that with other support staff right now. 24 Q. Okay. And so you mentioned the RubinBrown 25 numbers, but it sounds like -- the system you have</p>
<p style="text-align: right;">Page 158</p> <p>1 your office? 2 A. Right. So the system that we have set up 3 internally is when support staff assigns out cases 4 to a lawyer, Bob, they're going to track how many of 5 which case type they've assigned to Bob, you know, 6 as they assign out cases, and they're going to put 7 that information in a spreadsheet that has all of 8 the RubinBrown numbers built into it. When the 9 lawyer gets to 100 percent of their RubinBrown 10 capacity or just slightly above, 102 percent, what 11 have you, that triggers an e-mail from support staff 12 to me and to the lawyer, Hey, Lawyer Bob is at 13 103 percent of capacity or what have you. I then 14 either talk or e-mail with the lawyer, and, 15 generally, the conversation is, Hey, can you take 16 more cases and still provide ethical, competent 17 representation on all of your cases, or no? And if 18 the lawyer says, Man, I think I can take one or two 19 more, I'm probably going to give the lawyer one or 20 two more, as long as they're providing me a rational 21 reason for believing so. If they say No, I 22 absolutely cannot take additional cases, then we cut 23 them off and do not assign any additional cases, at 24 least until the start of the next month. 25 Q. And just quickly, if you could, tell me</p>	<p style="text-align: right;">Page 160</p> <p>1 set up is the RubinBrown numbers, but, also -- not 2 just a strict adherence to those numbers, but, also, 3 based on your own experience, having done this for 4 15 years, and your attorneys' experience with their 5 own caseloads, coming up to a holistic evaluation of 6 going to the absolute maximum that someone could 7 take and still provide ethical representation. Is 8 that fair? 9 A. Yes. 10 Q. Okay. And you mentioned in this motion 11 and suggestions Rule 4 for the rules of professional 12 conduct, and you mentioned that a couple of times in 13 this deposition. And is it your understanding that 14 that rule governs public defenders -- you and the 15 other public defenders in your office, just as it 16 governs every other attorney in the state of 17 Missouri? 18 A. Yes. 19 Q. Okay. And so if you could turn -- so what 20 we were just looking at, Plaintiff's Exhibit 25, the 21 suggestions and support, and page 151. 22 A. Yes. 23 Q. And if you could just read that -- the 24 main -- the first paragraph under Roman Numeral 3. 25 A. Yes. The title heading is, "Area 19</p>

40 (Pages 157 to 160)

<p style="text-align: right;">Page 161</p> <p>1 attorneys must be permitted to assert and rely upon</p> <p>2 the rules of professional conduct." The body of the</p> <p>3 paragraph reads:</p> <p>4 "There is no exception in the rules of</p> <p>5 professional conduct, Rule 4, for public defender</p> <p>6 attorneys." And it's got the citations.</p> <p>7 "To the contrary, as the American Bar</p> <p>8 Association has aptly noted, there is an implicit</p> <p>9 premise that governments, which establish and fund</p> <p>10 providers of public defense, never intended that the</p> <p>11 lawyers who furnish the representation would be</p> <p>12 asked to do so if it meant violating the ethical</p> <p>13 duties pursuant to professional conduct rules." And</p> <p>14 then there's a citation.</p> <p>15 "For this reason public defenders are</p> <p>16 risking their own professional lives when appointed</p> <p>17 to an excessive number of cases." Citation.</p> <p>18 Q. Okay. And those – the last two sentences</p> <p>19 you read, the "due to the contrary" sentence and the</p> <p>20 "for this reason sentence," those are, in fact, just</p> <p>21 full, direct quotes from the Waters case from the</p> <p>22 Missouri Supreme Court; is that right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And is this consistent with your</p> <p>25 understanding –</p>	<p style="text-align: right;">Page 163</p> <p>1 that -- or move to withdraw, and I've done that.</p> <p>2 You know, we're doing the Chapter 600 conferences as</p> <p>3 well. And -- you know, and I self-reported because</p> <p>4 I've got too many cases, and I know it. You know --</p> <p>5 and -- you know, every time I've been ordered to</p> <p>6 take a case, I've done it. And, like I said, I'm</p> <p>7 working overtime. I'm doing the best I can. So I</p> <p>8 don't know. I mean, I feel like I have done what</p> <p>9 the rules require me to do when I've got too many</p> <p>10 cases, but I also feel like because I've -- I feel</p> <p>11 like I've tried to take action early before a lot of</p> <p>12 people I knew in other offices were doing anything</p> <p>13 to address the thing. I feel like I'm probably in a</p> <p>14 better situation so far as my professional licensure</p> <p>15 is concerned.</p> <p>16 Q. Okay. But despite the fact that you've</p> <p>17 moved to decline and withdraw on hundreds of your</p> <p>18 own cases, in addition to hundreds of cases for the</p> <p>19 office, you've been ordered to appear in many of</p> <p>20 those cases; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And so, therefore, you end up with the</p> <p>23 213-plus cases that you mentioned earlier?</p> <p>24 A. Correct.</p> <p>25 Q. And you have said you don't feel like</p>
<p style="text-align: right;">Page 162</p> <p>1 A. Yes.</p> <p>2 Q. -- of what rules and responsibilities</p> <p>3 govern you and the attorneys in your office?</p> <p>4 A. Yes.</p> <p>5 Q. And I want to focus strictly on that last</p> <p>6 sentence, the "For this reason, public defenders are</p> <p>7 risking their own professional lives when appointed</p> <p>8 to an excessive number of cases." Do you agree with</p> <p>9 that sentiment expressed by the Missouri Supreme</p> <p>10 Court?</p> <p>11 A. Yeah. Everybody in the public defender's</p> <p>12 office that has too many cases is very concerned</p> <p>13 about their professional licensure at this point.</p> <p>14 Q. And is that something you've heard from</p> <p>15 the attorneys in your office?</p> <p>16 A. Yes.</p> <p>17 Q. And from attorneys in other offices around</p> <p>18 the state with whom you've spoken?</p> <p>19 A. Yes.</p> <p>20 Q. And is that something you're concerned</p> <p>21 about yourself for your own professional license?</p> <p>22 A. Maybe I should be. I feel like I've done</p> <p>23 everything I could realistically do at this point.</p> <p>24 I mean, when I read the rules, it says, if you've</p> <p>25 got too many cases, move to decline, I've done</p>	<p style="text-align: right;">Page 164</p> <p>1 you're able to ethically represent many of those</p> <p>2 individuals who are -- who you've currently entered</p> <p>3 appearance for; is that right?</p> <p>4 A. I'm definitely not providing competent</p> <p>5 representation to those 213 clients.</p> <p>6 Q. Despite your every intention and best</p> <p>7 effort to do so?</p> <p>8 A. Correct.</p> <p>9 Q. And despite the fact that you're a 15-year</p> <p>10 veteran of the Missouri State Public Defender</p> <p>11 System?</p> <p>12 A. Correct.</p> <p>13 Q. And, therefore, are -- obviously, by</p> <p>14 virtue of that, have much more experience than</p> <p>15 anyone -- twice as much experience as anyone else in</p> <p>16 your office, five times as much experience as the</p> <p>17 second-most experienced person -- you know, the</p> <p>18 third most -- second-most experienced line defender</p> <p>19 in your office; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. And whatever 12 times 15 -- you know,</p> <p>22 almost 100 times more experience than the individual</p> <p>23 who started November 13th and already has 78 cases?</p> <p>24 A. I'll trust your math on that. I don't</p> <p>25 know.</p>

<p style="text-align: right;">Page 165</p> <p>1 Q. Yeah. Much, much more experience than he 2 does and many of the people in your office? 3 A. Correct. 4 Q. And you mentioned you self-reported. Can 5 you tell me about that? 6 A. At some point a few months ago it became 7 clear to me that I felt like I had done everything I 8 could think to do to address this situation, and yet 9 my caseload was not in compliance with what I felt 10 like it ought to be with any of our ABA, NAC 11 standards, RubinBrown metric, whatever. I mean, I 12 had kind of blown all of those out of the water. 13 And, bottom line, I was not providing competent, 14 ethical representation, in spite of the fact I've 15 been telling my courts that I am not providing 16 competent, ethical representation; please don't put 17 me on another case. So I self-reported to OCDC. 18 Q. How did you do so? 19 A. I just sent them a fax. 20 Q. You sent them a fax? 21 A. Yeah. 22 Q. Okay. All right. 23 MR. SCHERZER: I'd like, if possible, 24 Jackie, at some point, if we could get that. 25 Q. (By Mr. Scherzer) And what's the -- do you</p>	<p style="text-align: right;">Page 167</p> <p>1 I can't think of any word better, but it's not a 2 criminal prosecution, but took action against Mr. 3 Hinkebein's license. It ended up going to the 4 Missouri Supreme Court, and the Missouri Supreme 5 Court put Mr. Hinkebein on probation. 6 Q. Okay. And is that a case that everyone in 7 your office is aware of? 8 A. Yes. 9 Q. And it sounds like you've had discussions 10 with other individuals in the MSPD about that case 11 as well. 12 A. Yes. 13 Q. Okay. And has that caused other attorneys 14 in your office to be concerned about their own 15 license and possible ethical cases against them? 16 A. Yes. In fact, it was after that decision 17 that came down I had two lawyers leave. And I asked 18 them point-blank, What, if any, impact did the 19 Hinkebein decision have on your decision to leave? 20 One described it as a consideration; the other 21 described it as the straw that broke the camel's 22 back. Tangentially, you had asked me earlier about 23 how courts have responded to my -- the various 24 motions that I've filed. I had an additional 25 thought. One of my judges in Miller County told me</p>
<p style="text-align: right;">Page 166</p> <p>1 know what, if anything, have you heard about that 2 self-reporting? 3 A. I've heard nothing. 4 Q. Do you know what the process is for -- the 5 ordinary process for such a report? 6 A. No. 7 Q. And you said OCDC. Can you just tell us 8 what that is? 9 A. Office of the Chief Disciplinary Counsel. 10 Q. Was that the same office that prosecuted 11 Karl -- I don't know if "prosecute" is the right 12 word, but brought the case against Karl Hinkebein? 13 A. Yes. 14 Q. And is that the Hinkebein decision that 15 you referenced earlier; is that right? 16 A. Yes. 17 Q. And can you just tell us briefly what your 18 understanding of that case is? 19 A. Sure. There was a Missouri public 20 defender who had clients pursue complaint or 21 complaints relating to lack of client contact and 22 misfiling deadlines. And as I understand, there had 23 been at least one complaint or a series of 24 complaints in the past. OCDC began an investigation 25 and pursued -- you used the word "prosecution," and</p>	<p style="text-align: right;">Page 168</p> <p>1 that the right remedy is for me to quit. 2 Q. And did he or she explain how that would 3 possibly be a remedy for either you or your clients? 4 A. His thought was that that would be a 5 remedy for me because then I would not have a 6 caseload problem. 7 Q. Okay. And what is your opinion about what 8 repercussions that would have for the other 9 individuals in your office and the clients that you 10 and they represent? 11 A. Well, you know, the -- it means the 12 clients, eventually, at some point, when someone 13 hired a replacement for me, they would get another 14 lawyer; it might be their fifth or their sixth at 15 that point. I mean, I think that -- you know, and 16 at that point, the experience level of the lawyers 17 in my office would be cut pretty dramatically. 18 Q. And you mentioned, nonetheless, despite 19 your -- the concerns that you have for not only your 20 colleagues and the individuals you supervise, but 21 your and their clients that you're considering doing 22 that at some point because of the -- of the 23 tremendous caseload and overwhelming caseload that 24 you're experiencing? 25 A. Yes.</p>

42 (Pages 165 to 168)

<p style="text-align: right;">Page 169</p> <p>1 Q. And if it weren't for that overwhelming 2 caseload, is that something that you would be 3 considering otherwise? Would you be consider 4 quitting or resigning? 5 A. No. I love -- I love the mission. I love 6 my clients. I like doing the work that we do. I'm 7 in a convenient place in that my wife gets paid like 8 a real lawyer, and so I -- you know, I don't have to 9 go make more money somewhere else. The only thing 10 that I think would drive me away would be the 11 caseload. 12 Q. Okay. All right. I want to just turn 13 back quickly to Plaintiff's Exhibit 17, which is 14 that transcript that we talked about at the very 15 beginning of the deposition. 16 A. Yes. 17 Q. Do you remember that? And so that is a 18 transcript of this hearing -- the Quentin Williams 19 caseload hearing; is that right? 20 A. Yes. 21 Q. Okay. And if you could turn to 22 page 125. -- or excuse me -- the very bottom of 124. 23 A. Yes. 24 Q. Can you just read starting three lines up, 25 "If I'm appointed on Mr. Williams' case -- " down to</p>	<p style="text-align: right;">Page 171</p> <p>1 that applies to me as an individual lawyer or one 2 that applies to my responsibilities as a supervisor. 3 Q. And fair to say that your current belief 4 is that you have -- that is, in fact, the nature of 5 a Catch-22: You have no other choice. Either you 6 can violate your own ethical responsibilities as a 7 lawyer to your own clients, or you can violate your 8 ethical responsibilities as a supervisor by 9 assigning that case to the other individuals in your 10 office; is that right? 11 A. Correct. 12 Q. You don't have any other option that would 13 fully comply with your ethical responsibilities? 14 A. Correct. 15 Q. Okay. And so tell -- I guess, then, 16 quickly, while we're doing this -- 17 MR. SCHERZER: Can we go off the record 18 for one second? 19 VIDEOGRAPHER: The time is 2:15 p.m., and 20 we're off the record. 21 (A recess was taken.) 22 (Deposition Exhibit No. 26 was marked for 23 identification.) 24 VIDEOGRAPHER: The time is 2:20 p.m., and 25 we're back on the record.</p>
<p style="text-align: right;">Page 170</p> <p>1 the end of that paragraph. 2 A. Yes. 3 Q. And by -- onto the end of that paragraph, 4 I mean, on 125. 5 A. Understood. 6 "If I'm appointed on Mr. Williams' case, 7 I'm caught in a Catch-22, in that I can't -- I can't 8 frankly represent him, too, with all of the people 9 that I've already got. And if I assign it to a 10 junior lawyer, who I believe already has too many 11 cases as I can possibly give them, then I'm going to 12 be violating my responsibilities as a supervisor. 13 So I'm kind of caught in a Catch-22, Judge. I'm 14 either going to force the lawyer to take the case, 15 which would violate my responsibilities as a 16 supervisor, and cause them to violate their 17 responsibilities under the court rules, or I can 18 just take it myself, and then it's just me." 19 Q. Okay. And so the Catch-22 you're 20 describing -- and are you still -- this was months 21 ago, but are you -- I suspect I know the answer to 22 this, but are you still feeling like you're in -- 23 you're still experiencing that Catch-22? 24 A. Absolutely. It's a question of which 25 ethical rule that I'm going to end up breaking: One</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. (By Mr. Scherzer) So, Mr. Carver, I'm 2 showing you what's been marked as Plaintiff's 3 Exhibit 26. Do you recognize that? 4 A. Yes. These would be -- contained within 5 Exhibit 26 are the various exhibits that I submitted 6 to the court in relation to the case conference 7 hearing on Mr. Quentin Williams' case. 8 Q. And we unfortunately don't have time to go 9 through in this any detail, but fair to say, if you 10 turn to Plaintiff's Exhibit 17, back to the 11 transcript again -- 12 A. Yes. 13 Q. -- and look at the second page of that, 14 which is 82 -- 15 A. Yes. 16 Q. -- Bates stamp 82. 17 A. Yes. 18 Q. And there's an exhibit index there with 19 Exhibits A through H. 20 A. Yes. 21 Q. Fair to say that Exhibit 26 is -- are 22 those one, two, three, four, five, six, seven -- 23 eight exhibits that you submitted at the caseload 24 conference? 25 A. Yes.</p>

43 (Pages 169 to 172)

<p style="text-align: right;">Page 173</p> <p>1 Q. Okay. And, in short, those -- that was 2 the affidavits were and are affidavits that 3 attorneys, current and former, in your office 4 prepared and you submitted on their behalf about 5 their caseload and other related issues? 6 A. Yes. 7 Q. And the caseload printout is a printout of 8 cases that you -- well, tell us what that caseload 9 printout is so I don't characterize it inaccurately. 10 A. That was a printout of cases that I had 11 open at the time. You'll see on the top of it and 12 then in the body of it there are -- you know, on the 13 top it's got 224, and it's crossed out, and it's 14 written 220, and then there's a couple, you know, of 15 people who are crossed off of the list. Very 16 shortly before the case conference, I had closed 17 those cases, but staff hadn't mechanically closed 18 them in the computer. So when I submitted what's 19 marked Exhibit H, I sort of did it with the caveat 20 that it says 224 but my current caseloads is 220 21 because I know those four cases had been closed. 22 Q. So at that time, you had 220 cases? 23 A. Correct. 24 Q. So fair to say that Exhibit H, the 25 caseload printout, is a printout of every open or</p>	<p style="text-align: right;">Page 175</p> <p>1 their caseloads are such that they can't provide 2 competent representation. So I'm going to find that 3 they cannot be asked to take cases that would 4 violate the -- more importantly, the clients' right 5 to effective assistance of counsel. So I'm going to 6 make that finding." 7 Q. Okay. So what's your understanding of 8 what the judge found there? 9 A. That our caseloads are such that we cannot 10 take additional cases and provide competent 11 representation, and so she's going to make a finding 12 to that effect. 13 Q. Okay. And what's the result been of that 14 finding? 15 A. So we had a second hearing on the case 16 conference, and by then our situation had changed 17 some because we had hired at least one more lawyer, 18 maybe two -- I can't remember off the top of my 19 head, but we were able to assign a significant 20 number of cases that had been awaiting counsel to 21 counsel -- including Mr. Williams. At the time of 22 the November 7 hearing, Mr. Williams had been in the 23 Cole County jail for five or six months. Between 24 the November 7 hearing and the subsequent hearing, 25 we were able to enter on his cases, and almost all</p>
<p style="text-align: right;">Page 174</p> <p>1 active case on your docket; is that right? 2 A. As of 11/7/17, yes. 3 Q. Okay. Great. Since that's the only 4 one -- you're done looking at it. Since that's the 5 only copy, do you mind if I take a gander at it? 6 A. Oh, sorry. 7 Q. I'll move on to other things, but ... 8 So turning to Exhibit 17, the transcript 9 of the caseload conference. 10 A. Yes. 11 Q. If you could turn to 137. 12 A. Yes. 13 Q. And do you see in the middle of that page 14 there's a long quote -- two-sentence statement from 15 the court? 16 A. Yes. 17 Q. And the court, again, is -- was which 18 judge? 19 A. Judge Joyce. 20 Q. Okay. And can you just read that -- those 21 three sentences. 22 A. Yes. So it starts on Line 10. 23 "The Court: I'm going to take it. 24 Counsel, you are all aware that we're 25 trying to work with the public defender and that</p>	<p style="text-align: right;">Page 176</p> <p>1 of the other cases who -- people who are confined in 2 the Cole County jail. There was still a substantial 3 block of 71 cases that we didn't know what to do 4 with. We didn't have a lawyer who could possibly 5 take those cases, too, or we couldn't divide those 6 cases up any more. In Phase 2 of the conference, 7 the judge asked me to submit that list to her and to 8 Mr. Richardson, the prosecutor, and they were going 9 to take a look at it to figure out what, if 10 anything, they could do; take jail off the table, 11 appoint a private lawyer, what have you. I 12 submitted that list to the court and to 13 Mr. Richardson. I have not received any sort of 14 response one way or another as to what the court 15 intended to do with those 71 cases. 16 Q. And so those 71 cases are 71 individuals 17 who qualify for public defender services? 18 A. There are 71 cases. Some individuals had 19 more than one case. 20 Q. And how many of those individuals, if you 21 know, are or were in custody? 22 A. Of the 71, I think, maybe one or two. 23 Q. Got it. 24 A. And I think at this point, if they were in 25 custody, they probably have been assigned out by</p>

44 (Pages 173 to 176)

<p style="text-align: right;">Page 177</p> <p>1 now.</p> <p>2 Q. Okay. And to be clear, on some of those</p> <p>3 cases that are being assigned, you aren't -- you --</p> <p>4 I guess, primarily, you -- you aren't able to --</p> <p>5 well, as we've termed, conduct active representation</p> <p>6 for a period of, at least, months before starting on</p> <p>7 the case?</p> <p>8 A. I am not voluntarily entering on anything,</p> <p>9 and I haven't been for months. The only way I'm</p> <p>10 getting in a case is if the court orders me to take</p> <p>11 a case. With Cole County cases, you know, what</p> <p>12 we're doing is at the start of every month, support</p> <p>13 staff is going to open up and assign as many cases</p> <p>14 as they can, you know, starting with in-custody</p> <p>15 clients first, and then if we can't assign more,</p> <p>16 then we start filing motions.</p> <p>17 Q. Okay. And I just want to turn back</p> <p>18 quickly to -- just for one second to Plaintiff's</p> <p>19 Exhibit 26, which I'll pass back to you. In</p> <p>20 Exhibit H, the case level report that you mentioned</p> <p>21 previously in that Exhibit 26.</p> <p>22 A. Yes.</p> <p>23 Q. So that's -- that caseload report, your</p> <p>24 caseload is broken down in there by type of case A</p> <p>25 and B felony, murders, drug felony, et cetera; is</p>	<p style="text-align: right;">Page 179</p> <p>1 example, right now, in Miller County, on my cases,</p> <p>2 when a person wants a public defender to represent</p> <p>3 them, they're going to fill out a formal application</p> <p>4 for a public defender. I'll take that to the</p> <p>5 responsible staff member, they'll review the</p> <p>6 application, they'll check Case.net, and they</p> <p>7 sometimes will have to call the applicant back or</p> <p>8 call a bondsman or ask some basic questions to</p> <p>9 figure out if the person meets the criteria for a</p> <p>10 public defender. Once support staff makes the</p> <p>11 determination that the applicant qualifies, you</p> <p>12 know, if we had an available lawyer, we'd just open</p> <p>13 up a case file, file an entry of appearance, and ask</p> <p>14 for discovery. You know, right now, it's not quite</p> <p>15 working like that. On my cases in Miller County</p> <p>16 right now, instead of filing an entry and a request</p> <p>17 for discovery, I'm filing a motion for caseload</p> <p>18 conference or, previously, a motion to decline</p> <p>19 representation or something along those lines.</p> <p>20 On Cole County and Moniteau County cases,</p> <p>21 it's a little bit different, in that if we've got a</p> <p>22 lawyer we can assign to the thing, you know, right</p> <p>23 away, certainly, we will. If we're not able to,</p> <p>24 then we would be filing a motion for caseload</p> <p>25 conference.</p>
<p style="text-align: right;">Page 178</p> <p>1 that right?</p> <p>2 A. Yes.</p> <p>3 Q. And it lists a number of -- next to those</p> <p>4 categories, it lists a number for each of those</p> <p>5 categories. Fair to say that's the number of cases</p> <p>6 in each of those categories there was at that time,</p> <p>7 at least on your docket?</p> <p>8 A. Yes. Except, you know, as corrected.</p> <p>9 Q. As corrected by the court?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then it has a date next to</p> <p>12 that.</p> <p>13 A. Yes.</p> <p>14 Q. Can you tell me what that date is? I</p> <p>15 mean, what that date --</p> <p>16 A. I believe that that is the date when the</p> <p>17 case was opened in our system.</p> <p>18 Q. And when is a case opened in your system?</p> <p>19 Is that opened at the first appearance or the first</p> <p>20 appearance that you enter an appearance?</p> <p>21 A. So when we receive an application for</p> <p>22 public defender services -- well, it's -- things</p> <p>23 have been -- things are a little weird now, so this</p> <p>24 is going to be kind of complicated to explain. I'm</p> <p>25 going to do the best I can. You know, like, for</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. I have one more exhibit, and then some</p> <p>2 questions, and then we'll be finished. The last</p> <p>3 exhibit -- I believe we're up to Exhibit 27.</p> <p>4 (Deposition Exhibit No. 27 was marked for</p> <p>5 identification.)</p> <p>6 Q. (By Mr. Scherzer) Do you recognize this --</p> <p>7 A. Yes.</p> <p>8 Q. -- document? And what is it?</p> <p>9 A. These would be -- there was a brief period</p> <p>10 of time when we couldn't take cases, I was sort of</p> <p>11 sending them to the administrative office, and this</p> <p>12 would be the e-mails associated with the cases that</p> <p>13 we had sort of attempted to send.</p> <p>14 Q. And if you could turn to Bates stamp 14,</p> <p>15 the last page. And so just to clarify, this is --</p> <p>16 is this the set of -- or at least a set of the</p> <p>17 e-mails that you've mentioned earlier that you had</p> <p>18 sent to Ellen Blau, and then she eventually</p> <p>19 responded that there was not going to be any magical</p> <p>20 help coming from another office?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And so it looks like there were --</p> <p>23 who is Kalie Campbell?</p> <p>24 A. She is the office support assistant in</p> <p>25 Area 19.</p>

45 (Pages 177 to 180)

1 **Q. Okay. And it looks like in these previous**
 2 **pages, she sent a -- sort of a form e-mail saying**
 3 **the Area 19 office is overloaded and cannot possibly**
 4 **accept additional cases without violating our**
 5 **ethical obligations?**

6 A. Yes. That was language that I typed up
 7 and sent to her and asked that she paste into the
 8 body of an e-mail when sending the cases to the
 9 Columbia administrative office.

10 **Q. Okay. So these were all -- it looks**
 11 **like -- and for attachment reasons, those individual**
 12 **e-mails didn't go through. And then at the end here**
 13 **on 14, those e-mail sent October 12th, 2017 at**
 14 **3:01 p.m., she sent a number of -- it looks like 11**
 15 **cases with that line, the Area 19 office is**
 16 **overloaded and cannot possibly accept additional**
 17 **cases without violating our ethical obligations?**

18 A. Yes.

19 **Q. And that was, as you said, language that**
 20 **instructed her to send?**

21 A. Yes.

22 **Q. And the response from the central office**
 23 **was, We don't have any way of handling these cases**
 24 **from anyone outside your office; your office is**
 25 **going to have to try to take other steps to try to**

1 of time.

2 **Q. Okay. Given your -- given the caseload**
 3 **issues that we've discussed at length today?**

4 A. Correct.

5 **Q. Okay. All right. I'll just run through**
 6 **and try to be as quick as I can. Just some**
 7 **summation questions about many of the things we've**
 8 **discussed today.**

9 In your opinion, do you have the time and
 10 resources to communicate with clients in the manner
 11 that each case requires?

12 A. Absolutely not.

13 **Q. In your opinion -- and speaking now about**
 14 **the time prior to when you instituted these caseload**
 15 **controls that caused your own caseload to jump so**
 16 **dramatically, in your opinion, do the attorneys in**
 17 **your office -- did the attorneys in your office at**
 18 **that time, in 2016, let's say, have the time and**
 19 **resources to communicate with clients in the manner**
 20 **that each case required?**

21 A. In 2016, I do not.

22 **Q. You do not believe they did have that**
 23 **time?**

24 A. Correct.

25 **Q. In your opinion today, do you have the**

1 remedy this situation?

2 A. Yes.

3 **Q. Okay. I just want to go quickly to**
 4 **initial hearings, when someone is first brought**
 5 **before the judge.**

6 A. Yes.

7 **Q. Is your office present at those -- does**
 8 **your office enter an appearance and represent**
 9 **individuals at those hearings?**

10 A. Generally, no.

11 **Q. Okay. And is it at those hearings that**
 12 **bond is set, generally?**

13 A. Generally, in most cases, there will be
 14 some bond that has been fixed before that hearing.
 15 Certainly, that hearing would be an opportunity to
 16 seek reduction of bond, if we were there. But,
 17 generally, we are not there.

18 **Q. And why is it that you're not there?**

19 A. The -- we simply -- I mean, at the end of
 20 the day, what it boils down to is, we simply do not
 21 have enough people to even think about stationing
 22 them in a courtroom, you know, in the event that
 23 somebody had gotten arrested, you know, the night
 24 before or, you know, whatever. I mean, we -- there
 25 just simply aren't people -- we don't have that kind

1 time and resources to investigate each case of your
 2 cases in the manner that it requires?

3 A. No.

4 **Q. And in 2016, before you instituted these**
 5 **caseload controls that caused your own caseload to**
 6 **spike so dramatically, did the attorneys in your**
 7 **office have the time and resources to investigate**
 8 **each case in the manner it required?**

9 A. No. Complicating all of this is, we have
 10 one investigator. So in addition to the lawyer --
 11 being short staffed on lawyers, we're also short
 12 investigators.

13 **Q. Okay. And you've mentioned this**
 14 **previously, but without getting into specifics or**
 15 **compromising attorney-client privilege, can you**
 16 **think of a time when your representation of a client**
 17 **was hampered by a lack of time to investigate the**
 18 **case?**

19 A. Yes.

20 **Q. And, again, same question in 2016, without**
 21 **getting -- for the attorneys in your office, without**
 22 **compromising attorney-client privilege, can you**
 23 **think of a time when the representation of a client**
 24 **by an attorney in your office was hampered by a lack**
 25 **of time to investigate a case?**

<p style="text-align: right;">Page 185</p> <p>1 A. I'm confident that it happened. I</p> <p>2 couldn't -- I mean, as I'm sitting here now, I</p> <p>3 couldn't think of a case, even in my mind, without</p> <p>4 speaking the name, which -- but, yes. Understanding</p> <p>5 the caseload we were carrying in 2016, yes.</p> <p>6 Q. Okay. In your opinion, do you have the</p> <p>7 time and resources to obtain and review discovery in</p> <p>8 the manner each case requires?</p> <p>9 A. No.</p> <p>10 Q. In 2016, for the attorneys in your office,</p> <p>11 did they have the time and resources to obtain and</p> <p>12 review discovery in the manner each case requires?</p> <p>13 A. No.</p> <p>14 Q. Speaking of your caseload, can you,</p> <p>15 without getting into specifics, think of a time when</p> <p>16 your representation of a client was hampered by a</p> <p>17 lack of time to obtain and review discovery?</p> <p>18 A. Yes.</p> <p>19 Q. In your opinion, do you have the time and</p> <p>20 resources to consult with experts in the manner each</p> <p>21 case requires?</p> <p>22 A. No.</p> <p>23 Q. In 2016, speaking of the attorneys in your</p> <p>24 office, did they have the time and resources to</p> <p>25 consult with experts in the manner each case</p>	<p style="text-align: right;">Page 187</p> <p>1 A. No.</p> <p>2 Q. In your opinion, speaking about 2016,</p> <p>3 before the caseload controls, did the attorneys in</p> <p>4 your office have the time and resources to</p> <p>5 adequately prepare for trial?</p> <p>6 A. No.</p> <p>7 Q. Okay. In your opinion, do you have the</p> <p>8 time and resources to adequately negotiate plea</p> <p>9 deals and counsel your clients on whether or not to</p> <p>10 accept a plea deal?</p> <p>11 A. No.</p> <p>12 Q. In your opinion, speaking about 2016, did</p> <p>13 the attorneys in your office have the time and</p> <p>14 resources to negotiate plea deals and counsel your</p> <p>15 clients on whether or not to accept a plea deal?</p> <p>16 A. No.</p> <p>17 Q. Without getting into specifics, can you</p> <p>18 think of a time when you could have gotten your</p> <p>19 client a better plea deal with more time and</p> <p>20 appropriate resources?</p> <p>21 A. Yes.</p> <p>22 Q. In your opinion, do you have the time and</p> <p>23 resources to adequately advise your clients on the</p> <p>24 immigration consequences of the decisions they make</p> <p>25 about their criminal cases?</p>
<p style="text-align: right;">Page 186</p> <p>1 requires?</p> <p>2 A. No.</p> <p>3 Q. Without getting into specifics, and you</p> <p>4 mentioned one already, can you think of a time when</p> <p>5 your representation of a client was hampered by a</p> <p>6 lack of time to consult with an expert?</p> <p>7 A. Yes.</p> <p>8 Q. In your opinion, do you have the time and</p> <p>9 resources to file and research pretrial motions in</p> <p>10 the manner each case requires?</p> <p>11 A. No.</p> <p>12 Q. In your opinion, speaking about 2016,</p> <p>13 before you instituted these caseload controls, did</p> <p>14 the attorneys in your office have the time and</p> <p>15 resources to research and file pretrial motions in</p> <p>16 the manner each case requires?</p> <p>17 A. They did not.</p> <p>18 Q. Without getting into specifics, can you</p> <p>19 think of a time when your representation of a client</p> <p>20 was hampered by a lack of time to research and file</p> <p>21 pretrial motions?</p> <p>22 A. Yes.</p> <p>23 Q. In your opinion, getting to the -- do you</p> <p>24 have the time and resources to adequately prepare</p> <p>25 for trial?</p>	<p style="text-align: right;">Page 188</p> <p>1 A. I -- well, I don't feel, generally, I have</p> <p>2 enough time to counsel my clients. I'm trying to</p> <p>3 think of a situation in which I felt I didn't have</p> <p>4 time to discuss an immigration issue. I'm not</p> <p>5 thinking of one, but, you know, to be able to think</p> <p>6 of one, I have to be aware of the issue, and to be</p> <p>7 aware of the issue, I really need to talk to my</p> <p>8 client.</p> <p>9 And as I mentioned earlier, my client</p> <p>10 contact right now is atrocious. I've got people who</p> <p>11 have been in jail for two months. Somewhere there's</p> <p>12 probably an immigration issue. So I'm thinking out</p> <p>13 loud in response to your question.</p> <p>14 Q. Understood.</p> <p>15 A. And now I've lost track of your initial</p> <p>16 question. I apologize.</p> <p>17 Q. No. I think that -- I think you've</p> <p>18 answered it.</p> <p>19 A. Okay.</p> <p>20 Q. Is it reasonable to say you very well may</p> <p>21 not even be aware of an immigration consequence</p> <p>22 because of your inability, due to your caseload, to</p> <p>23 even contact or regularly speak with your clients?</p> <p>24 A. Correct.</p> <p>25 Q. And you mentioned Mr. Williams. You said</p>

47 (Pages 185 to 188)

<p style="text-align: right;">Page 189</p> <p>1 he had been in jail for five or six months. Had you 2 been able to speak with him in that time? 3 A. I had talked with him very quickly over 4 the phone a couple of times to explain the case 5 conference motion and our inability to assign him a 6 lawyer. I certainly engaged in no substantive legal 7 representation, and, to my knowledge, nobody from 8 the office did either. 9 Q. For at least five and, perhaps, six or 10 more months that he had been waiting for 11 representation? 12 A. Correct. 13 Q. Okay. In your -- just some -- a few -- 14 three or four final questions. 15 In your opinion, can the attorneys -- if 16 you had not instituted the caseload controls, could 17 the attorneys in your office adequately represent 18 all of the clients on their docket? 19 A. No. 20 Q. And that's true no matter how experienced 21 that lawyer might be? 22 A. Correct. 23 Q. In your opinion, now that you have 24 instituted the caseload controls and have 213 open 25 cases yourself, could any attorney adequately</p>	<p style="text-align: right;">Page 191</p> <p>1 A. Okay. I'll stop you if I need a break. 2 Q. Excellent. Please do. 3 Again, my name is Steven Alan Ramsey, and 4 I represent the state of Missouri and Governor 5 Greitens in this matter. I will attempt not to 6 interrupt you -- 7 A. Okay. 8 Q. -- while you are answering my questions. 9 If I do, the reason will be twofold: One is simply 10 because I'm impatient, which I apologize for in 11 advance, but the second is because you're answering 12 a question that I did not ask. 13 A. Okay. 14 Q. To begin, going back to your background, 15 did you start at the Missouri State Public Defender 16 System right out of law school, or did you have a 17 job prior to joining the public defender system? 18 A. I worked at a private firm. 19 Q. Okay. What firm was that? 20 A. Mariea -- M-a-r-i-e-a -- & Sigmund -- 21 S-i-g-m-u-n-d -- in Jefferson City, Missouri. 22 Q. About how long were you there? 23 A. One year. 24 Q. One year. And then did you hold any other 25 positions before that after law school?</p>
<p style="text-align: right;">Page 190</p> <p>1 represent clients, given the constraints you're 2 facing? 3 A. No. Not on these cases. There's some 4 very serious cases in these 213. 5 Q. And, again, that's 213 cases, in addition 6 to the numerous administrative, supervisory, hiring, 7 budgeting, training -- 8 A. Correct. 9 Q. -- requirements that you have as the 10 district defender? 11 A. Yes. 12 Q. Okay. Is there anything else you think we 13 should know regarding your ability or the ability of 14 your office to provide effective representation? 15 A. I can't think of anything. 16 Q. Okay. 17 MR. SCHERZER: Thank you very much for 18 your testimony here today. That's all I have for 19 now. 20 CROSS-EXAMINATION 21 BY MR. RAMSEY: 22 Q. Would you like to take a break at this 23 point, or would you like to push on through? 24 A. I'm okay. If you ... 25 Q. I'm okay as well.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. No. 2 Q. Did you go straight from undergrad into 3 law school? 4 A. Yes. 5 Q. What did you study in undergrad? What was 6 your major? 7 A. I majored in international business with a 8 minor in Spanish. 9 Q. Turning to your preparation -- not 10 necessarily for this deposition, but in regard to 11 the workload and the caseload concerns. So what I'm 12 gathering is you've talked to a number of judges. 13 A. Yes. 14 Q. Have you spoken to organizations as well? 15 A. So there was -- let's see. In 16 Jefferson City there was sort of a community 17 forum -- on a completely different issue. In the 18 context of that issue, public defender caseloads did 19 come up. I've certainly spoken with a number of 20 different media organizations. Those are the two 21 things that come to mind in response to your 22 question, but I -- were those responsive to what you 23 asked? 24 Q. Yes. 25 A. Okay. Okay.</p>

48 (Pages 189 to 192)

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1 **Q. And I understand it's a very broad**
 2 **question --**
 3 **A. Right. Right.**
 4 **Q. -- being with the system for 15 years. So**
 5 **say in the past year or so -- a couple of years,**
 6 **what members of the press or what press**
 7 **organizations -- pardon me -- have you spoken to, if**
 8 **you can recollect?**
 9 **A. KOMU, KRCG, the Jefferson City News**
 10 **Tribune. There have been a couple of different**
 11 **student reporters majoring in journalism who were**
 12 **affiliated with one of the major news sources, but I**
 13 **can't remember the names of these students or the**
 14 **media source that they were affiliated with. I may**
 15 **have spoken to the Lake Expo. One of the students**
 16 **was associated with KBIA. I know I've talked to a**
 17 **reporter with the Columbia Tribune, but I can't**
 18 **remember if it was about caseloads or something**
 19 **else. There's an Ozark radio. That's all I can**
 20 **remember off of the top of my head.**
 21 **Q. I failed to mention this, but a number of**
 22 **my questions will be twofold.**
 23 **A. Okay.**
 24 **Q. Not those beginning ones, but when we get**
 25 **into more or less your role as the district**

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1 **A. Okay.**
 2 **Q. At this point in time, do you have a sense**
 3 **for how many cases total your district has opened in**
 4 **2017?**
 5 **A. Yes. As of yesterday, I believe it was**
 6 **1,788.**
 7 **Q. Do you have a sense for how many -- let me**
 8 **rephrase.**
 9 **Do you have a sense for the percentage of**
 10 **criminal cases that arise in Cole, Miller, and**
 11 **Moniteau Counties that the public defender system**
 12 **takes in, as opposed to the private bar?**
 13 **A. Ballpark, probably we have about**
 14 **80 percent of the cases, but that's a very rough**
 15 **approximation.**
 16 **Q. Sure. It could be more --**
 17 **A. It could be more; it could be less.**
 18 **Q. -- and it could be less?**
 19 **A. Yup.**
 20 **Q. Have you noticed any trends in how your**
 21 **district defend cases? And what I mean by that,**
 22 **have you noticed that, say, in 2005, you would take**
 23 **maybe two depositions versus 2017, where per case**
 24 **you're taking, I don't know, five depositions. Have**
 25 **you seen an increase in depositions?**

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1 **defender, one, it's in your personal experience,**
 2 **your personal caseload, and then the second question**
 3 **will be regarding the attorneys that you supervise**
 4 **and the staff that you supervise. So that**
 5 **bifurcation will be present almost throughout the**
 6 **course of this line of questioning.**
 7 **A. Okay.**
 8 **Q. Do you have a sense at this point in time**
 9 **how many cases --**
 10 **A. I didn't mean to interrupt you. You can**
 11 **finish the question if you want, but I had an**
 12 **additional thought about your earlier question.**
 13 **Q. Please.**
 14 **A. You asked me about organizations I had**
 15 **spoken to. The Senate interim committee, the**
 16 **Spangenberg Group. Very distinctly, I remember**
 17 **meeting with them in 2009. I don't recall if I**
 18 **spoke with them in 2005. I don't know if you would**
 19 **consider -- yeah, I suppose it was an organization.**
 20 **When RubinBrown was developing their protocol, I was**
 21 **one of the panel members involved in that process.**
 22 **I don't know if that was responsive to**
 23 **your question; I'm just still trying to think of**
 24 **other organizations.**
 25 **Q. It was responsive.**

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1 **A. I really don't know. I would have to go**
 2 **back and play with some numbers. I couldn't tell**
 3 **you off of the top of my head.**
 4 **Q. Would your answer be the same for the**
 5 **usage of experts?**
 6 **A. I couldn't tell you off of the top of my**
 7 **head.**
 8 **Q. Would your answer be the same for the**
 9 **amount of plea deals that the -- you see come**
 10 **through your office?**
 11 **A. It's hard to speak to that, and there are**
 12 **a couple of reasons why: One was is I was in a**
 13 **different office in 2005, and -- plea deals are very**
 14 **jurisdictional, you know? One elected prosecutor is**
 15 **going to decide he's going to get very tough on**
 16 **crime; you may get more trials. I would have a hard**
 17 **time speaking to that.**
 18 **Q. And that's more than fine. As we proceed,**
 19 **if you simply can't answer, that's fine?**
 20 **A. If I think of something, I'll pause you,**
 21 **if that's all right.**
 22 **Q. Sounds good.**
 23 **A. All right.**
 24 **Q. Sitting here today, how would you define a**
 25 **case or a matter within your system?**

49 (Pages 193 to 196)

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<p style="text-align: right;">Page 197</p> <p>1 A. Sure. I would define a proceeding under 2 one case number as a case. So, for example, 3 Case 123, I have eight counts of wildly unrelated 4 things all filed under one case number, I would call 5 that one case. If under Case No. 125, I have a 6 probation violation -- even if the issues are going 7 to overlap the primary case, I would count that 8 probation violation as a second case, in large part 9 because even if the issues overlap, the issues may 10 be slightly different, and there's going to be 11 additional court dates, additional things I need to 12 do, different legal issues, so on and so forth. 13 Q. Would that same logic -- so let's say the 14 case is 127 -- 15 A. Yes. 16 Q. -- and that case went from an associate 17 circuit into a circuit. When they receive that new 18 number, would that be a separate case as well? 19 A. I would count that as one continuous case. 20 Q. Okay. 21 A. The only change in the number in that 22 hypothetical would be they add the 01 on the end. 23 We would consider that the same case. 24 Q. And would the same hold true if additional 25 files were charged onto that original case?</p>	<p style="text-align: right;">Page 199</p> <p>1 the case I give her my directions, in terms of how I 2 want her to do it. She manually does it, kind of 3 within the parameters that I have given her. 4 Q. And would that be your office assistant or 5 would that be one of your legal assistants? 6 A. That would be one of the legal assistants. 7 Q. And are those directions written down 8 anywhere? I know you testified earlier as to 9 geographic location playing a large role. 10 A. Uh-huh. 11 Q. Are there any other, I guess, 12 considerations that go into which cases are assigned 13 where? I know you mentioned, as well, that your 14 least experienced attorney has about 70. So I 15 imagine experience plays into that role as well. 16 A. Yes. 17 Q. What other factors, if any? 18 A. You know, certainly, the case type. The 19 lawyer that's been practicing law for 29 days, I 20 would not assign him a murder, rape, robbery, 21 kidnapping, complex case with DNA or -- you know, 22 something along those lines. So, you know, there's 23 that kind of component to the thing, how much 24 experience does the lawyer have as compared to the 25 case? For example, in Cole County, we've got a</p>
<p style="text-align: right;">Page 198</p> <p>1 A. Yes. So say my Case No. 123, pretend I'm 2 initially charged with stealing. It goes to the 3 grand jury, and the grand jury indicts me for 4 robbery, armed criminal action, everything under the 5 sun, and stealing all out of the same incident, I 6 would still consider that one case. 7 Q. And when you're saying you would consider 8 it, it would be considered like that in your 9 district and in how you allocate cases as one case 10 versus another case? 11 A. Correct. 12 Q. Okay. Now -- 13 A. Now, hypothetically speaking, pretend I'm 14 charged in associate court. That case is then 15 dismissed and refiled -- or I'm charged in circuit 16 court and it's dismissed and refiled and it's 17 refiled under a new case number out of the same 18 incident, I would call that a second case. 19 Q. Understood. Now, as the district 20 defender, you have the task of allocating how cases 21 are distributed amongst your staff? 22 A. Yes. 23 Q. And you do not shift that responsibility 24 onto any other of your staff members? 25 A. Well, I give my -- the staff that assigns</p>	<p style="text-align: right;">Page 200</p> <p>1 couple of lawyers who have got, you know, two or 2 three years under their belt in experience. As far 3 as I'm concerned, for the more serious cases, those 4 are going to be the lawyers that I'm going to look 5 to, as compared to the lawyer that's been practicing 6 for six months. For that kind of core group of the 7 three more experienced lawyers, you know, we try to 8 assign the bigger cases roughly equitably so that we 9 don't have one lawyer with all of the murder cases, 10 for example. 11 Was that responsive? 12 Q. It was. 13 A. Okay. Thank you. 14 Q. Are there any policies or procedures, 15 aside from your instructions to this legal assistant 16 to inform your district how cases are distributed, 17 or is it simply your directions to that legal 18 assistant that would do that? So said another way, 19 are there any actual policies and procedures just 20 flat out? 21 A. Like, written down on a piece of paper? 22 Q. Uh-huh. 23 A. Typically, it's a -- me walking over to 24 her and saying, Hey, let's do this different or 25 something like that.</p>

50 (Pages 197 to 200)

<p style="text-align: right;">Page 201</p> <p>1 Q. Sure. Just curious, are any public 2 defenders within your district, including yourself, 3 ever on a 24/7-hour duty, if you will? 4 A. In terms of getting phone calls from 5 courts or judges come to the court in the middle of 6 the night, we need to arraign somebody -- 7 Q. Never heard of that, but -- 8 A. Okay. 9 Q. Sure. 10 A. Okay. 11 Q. Along with that hypothetical, is there 12 anyone assigned for 24/7-hour-type duty or 13 responsibilities? 14 A. No. And I -- no. And, you know, like in 15 my jurisdiction, we don't have nighttime, weekend 16 arrangements. I've heard that's a thing, like, in 17 big cities. I don't know. I mean, if something 18 came up in the middle of the night, I assume it 19 would be me that dealt with it. 20 Q. Referring to the standard operating 21 procedure, if you will, that was referenced before, 22 I thought I heard there was no such thing as a 23 standard operating procedure at the district level 24 but there was -- or that there are general policies 25 at the statewide level. Was that your testimony?</p>	<p style="text-align: right;">Page 203</p> <p>1 you made and what it's like now. 2 A. Yes. My -- and this is me sort of 3 paraphrasing or -- but my -- as I understand, my 4 predecessor took the approach of, if you're asking 5 for a public defender, you probably need one; so 6 you're probably going to qualify. And, you know, 7 when I took over the office at the end of 2014 -- 8 you know, when I looked at the written pieces of 9 paper, the application for public defender services, 10 you know, I'd look at the things and I'd see -- it 11 looked to me like it might be incomplete, or we 12 would have information indicating that the client 13 had posted a significant bond or several significant 14 bonds or that they'd had a really expensive private 15 lawyer on another case or something of that kind. 16 And I felt like we were entering on cases that -- 17 where the applicant was outside of the guidelines 18 that we're required to follow under the code of 19 state regulations. 20 And so one of the things I did when I took 21 over that office was totally altered 22 administratively the process that we go through when 23 we receive an application for public defender 24 services, and we sort of changed who does the 25 screening over time. You know, at the time, it was</p>
<p style="text-align: right;">Page 202</p> <p>1 A. For my district? 2 Q. For your district, yes. 3 A. I don't -- now, I can't speak to other 4 offices. My understanding is that some may have 5 some formal policies of some kind or another. In my 6 district, we don't have any formal written policies, 7 procedures, things. 8 Q. Turning a bit to your district's 9 determination of indigence. 10 A. Yes. 11 Q. Who makes that determination in your 12 office? Is it your legal assistants or every single 13 attorney? 14 A. Right now it's the legal assistant, and 15 that's sort of changed over time. 16 Q. You mentioned the change in your screening 17 procedure -- 18 A. Correct. 19 Q. -- from, I guess, what it was before to 20 what it is now. 21 A. Correct. 22 Q. Would you describe what it was like 23 before -- 24 A. Yes. 25 Q. -- and then also describe the transition</p>	<p style="text-align: right;">Page 204</p> <p>1 the office support assistant -- she's actually not 2 with us anymore -- and then for a while, it was some 3 of the lawyers, and now it's all centralized into 4 the legal assistant. Now -- you know, what we're 5 doing is trying to be much more conservative in 6 approving applications for public defender services 7 to the extent humanly possible. We try and do some 8 due diligence, such as by checking in Case.net 9 before we enter to see if, in fact, the fancy-pants 10 private lawyer had been in on this case or a big, 11 ginormous bond had been posted. That's something we 12 would rather know ahead of time, you know, than find 13 out after we enter. And it may be that there's some 14 sort of innocent explanation behind the thing. 15 You know, I've got one client back in the 16 day that went to high school with the bondsman. 17 Well, I mean, he paid him, like, next to nothing on 18 a really big bond. Okay. I understand that the 19 money he paid to the bondman wasn't going to be 20 enough to hire a lawyer. Generally, though, that's 21 not the case. And one of the things that we're 22 required to look at is the accused's ability to post 23 a bond. That is a consideration in determining 24 indigence. 25 Q. So presently that diligence is on the</p>

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1 **shoulders of your legal assistants, the two that you**
2 **have?**

3 A. Correct. And -- you know, it's kind of
4 one of those things with -- sort of the expectation
5 is, if the lawyer receives information that would be
6 relevant. You know, like there are times when I'm
7 in court and I hear something that is relevant, and
8 I'll throw that on the face of the application so
9 that that gets communicated back to the legal
10 assistant. But, generally, by and large, an
11 overwhelming bulk of the cases, the due diligence is
12 being done by the legal assistants.

13 **Q. Sitting here today in your district, do**
14 **you have a sense for how often applications for**
15 **public defender services are denied?**

16 A. I don't know off the top of my head.
17 Certainly, they're denied at a much higher rate now
18 than they were in 2014.

19 **Q. So if I understand your testimony**
20 **correctly, caseloads and workloads have always been**
21 **high since you've been with the public defender**
22 **system?**

23 A. Yes. And they've fluctuated. Some points
24 higher than others, but, yes.

25 **Q. And -- go ahead.**

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1 **And you were a district defender in the**
2 **Fulton office before coming down to Jefferson City?**

3 A. Correct.

4 **Q. While you've been in the Jefferson City**
5 **office, if you will, what have you done, as far as**
6 **additional trainings -- and you already mentioned**
7 **that there are no real formal policies that you've**
8 **kind of, I guess, promulgated, for lack of a better**
9 **word. Have you established any type of trainings at**
10 **the local level in your district to deal with**
11 **workload and caseload concerns?**

12 A. Well, in terms of training for workload
13 and caseload concerns, you know, right now, we're
14 trying to manage all of the lawyers caseloads. I
15 mean, so, really, the training that consists of sort
16 of them seeing the bigger picture, but, you know,
17 kind of the theory behind this process that I've
18 come up with is, this should remove the individual
19 lawyers from being assigned 200 or more cases
20 simultaneously. At least for the assistant public
21 defenders, it has; it's just been me that has taken
22 a pinch, so ...

23 **Q. Speaking of, what is the threshold for the**
24 **attorneys that you supervise, in terms of they are**
25 **working at a reasonable level -- I think you said --**

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1 A. I was going to say, with one exception, if
2 you don't mind. There was a period of time in 2012
3 where one of the administrative rules was in effect,
4 and courts were fine with it. And so there was, I
5 want to say, six months where our caseloads were all
6 controlled -- everybody in the office. And I
7 finally got to that point -- you know, kind of at
8 the tail end of that six-month window where -- Oh,
9 my God, I can see the light of day, I can actually
10 work on all of my cases, not just throw a stack of
11 them in the file drawer. And then very quickly that
12 whole regime kind of fell apart and caseloads when
13 through the roof again.

14 When I look back at my time in the public
15 defender's office, you know, the tail end of that
16 six-month period when we had a caseload control
17 environment, that was like the one time when I felt
18 like everybody was -- everybody was able to do
19 everything.

20 **Q. Do you have a sense for how many cases you**
21 **had on your docket, if you will, at that point in**
22 **time?**

23 A. Oh, I couldn't tell you off the top of my
24 head now. Sorry. It's been a few years. Sorry.

25 **Q. No worries.**

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1 **according the RubinBrown study, is that 80 cases or**
2 **is that 100 cases, or at what level do you prevent**
3 **them from receiving more cases?**

4 A. Well -- so how many cases they can get
5 sort of depends on the complexity of the case
6 because a driving on a suspended misdemeanor case is
7 not as complicated as a murder case, for example.
8 And -- you know, and if you get down, like, into the
9 weeds of, like, the RubinBrown metric, you'll see
10 that, and it's sort of expanded. You know, sex
11 cases are more complicated than drug cases, which
12 are less complicated than regular run-of-the-mill
13 felony cases. And so -- you know, like I've
14 mentioned, you know, what we're doing is at the
15 start of every month, assigning out that lawyer as
16 many cases as we think they can possibly take. How
17 many that is is going to vary, depending on the case
18 type. Like, for example, if you take -- and my math
19 is a little bit shaky, so don't hold me to specific
20 numbers, but the RubinBrown metric is based on 2080
21 hours a year -- 40 hours a week for 52 weeks of the
22 year. If you divide that by 12, you get about,
23 what, 170-something, 180-something hours. If I were
24 to assign a lawyer a murder case, that's going to
25 put them at or slightly above that RubinBrown

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1 metric.
2 On the other hand, if I give them -- and,
3 again, my math is a little bit -- don't hold me to
4 the specific numbers. Potentially, I could give
5 them 27 misdemeanor traffic cases, which -- this is
6 a really long way of saying the number of cases they
7 may get is going to vary depending on the complexity
8 of the thing, and so there's not a hard and fast,
9 I'm going to cut you off at 70 cases --
10 **Q. Sure. It depends.**
11 A. Because it depends. And I apologize.
12 That was probably a longer explanation than you
13 needed.
14 **Q. No worries. So the -- I'll ask the same**
15 **question a different way.**
16 A. Okay.
17 **Q. The lawyer with the least experience**
18 **currently has around 70 cases?**
19 A. Correct.
20 **Q. Do you have a sense for the average or the**
21 **most aside from yourself?**
22 A. The most aside from myself as of yesterday
23 was 127. The average is, I'm going to say, about 80
24 or 90ish. And I didn't, like, you know, actually
25 sit down and average that out before answering that

1 question, but that's -- I'm trying to give you a
2 ballpark.
3 **Q. Now, with the references to the RubinBrown**
4 **report and with your participation in the RubinBrown**
5 **report, you have a background in business?**
6 A. Yes.
7 **Q. And you are an attorney?**
8 A. Yes.
9 **Q. Do you have any independent experience or**
10 **expertise as a statistician?**
11 A. I took a stats class in college --
12 **Q. So you know what standard deviation is,**
13 **but that's --**
14 A. It's been -- don't even ask me to describe
15 that right now, sir.
16 I have not taken any follow-up stats
17 classes since college, and I do not wish to take
18 additional stats classes now.
19 **Q. So to be clear, you do not have any**
20 **prior --**
21 A. Correct.
22 **Q. Okay.**
23 A. And I would not consider myself an expert
24 in statistics based on one stats class 20 years ago.
25 **Q. Now, the conversations concerning the -- I**

1 **believe you testified that five attorneys have left**
2 **your office this year.**
3 A. Yes.
4 **Q. Within 2017?**
5 A. Yes.
6 **Q. And two of them had children?**
7 A. Yes.
8 **Q. And they transferred to different offices?**
9 A. Yes.
10 **Q. One of them retired?**
11 A. Yes.
12 **Q. And then the other two, they moved --**
13 **well, I guess, one moved into private practice?**
14 A. Yes.
15 **Q. And the other also moved into private**
16 **practice? What did that fifth person --**
17 A. Went to the attorney general's office.
18 **Q. Went to the attorney general's office.**
19 **Have you ever been refused a deposition**
20 **that you have requested personally while you've been**
21 **with the Missouri public defender system?**
22 A. No. I've been told I needed to better
23 justify why I wanted to the deposition, but then
24 when I did, I was authorized to take it.
25 **Q. And have you ever denied -- ultimately**

1 **denied a request from an attorney you supervised to**
2 **take a deposition?**
3 A. If I can walk that back -- I take that
4 back. There were instances in which before
5 Ellen Blau -- I've had a number of supervisors over
6 the years. One of my supervisors was
7 Peter Sterling. As I'm sitting here thinking about
8 it, there were some times in which he -- so there
9 was a deposition request that I had made. He
10 contacted me and said, You know, look, can't your
11 investigator do this? Well, my answer was, I think
12 my investigator could do this, but the context of
13 the thing with what I'm trying to do in the case, I
14 think what would be more effective would be a
15 deposition, and his response was, Look, if your
16 investigator can do it, then your investigator needs
17 to go do it. And sort of for a period of time in
18 his tenure, up until he retired, sort of what he
19 kind of told everybody was, Look, from here on out,
20 if you want a deposition, it better be because your
21 investigator cannot do it. And there could be a
22 variety of reasons why your investigator might not
23 be able to do it. Some witnesses simply refuse to
24 talk to us voluntarily, and the only way that we can
25 talk to them is if we subpoena them to a deposition.

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1 Other times there are just situations that really do
2 not hold themselves well to a deposition.
3 Interviewing a six-year-old on a child sex case by
4 the investigator without the lawyer present -- in my
5 opinion, the better practice would be for the lawyer
6 to take a deposition if they need to interview the
7 youth.

8 **Q. And have any of those times been**
9 **specifically because there were not funds to fund**
10 **the deposition, or, at least, was that ever a reason**
11 **given?**

12 A. That was never given to me as a reason,
13 like, as in, We don't have money for this right now.
14 What was given to me was a, We need to conserve the
15 few dollars that we have, which is a slightly
16 different concern.

17 **Q. Are there any policies or procedures that**
18 **you have in your district or that you are aware of**
19 **within the system that you've utilized to limit the**
20 **total amount of dollars available for any particular**
21 **deposition? Said in a succinct way, are there any**
22 **limiting factors in terms of how many dollars can be**
23 **spent on a particular deposition?**

24 A. In terms of, like, a formal policy?

25 **Q. Yes.**

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1 A. Okay. I'm not aware of any rule that says
2 you cannot spend more than, you know, \$5,000 for
3 depositions on a felony case, for example. The --
4 you know, when I request money from my supervisor
5 for authorization to extend funds for depositions,
6 you know, I've got to list the witnesses that I wish
7 to depose, why I wish to depose them, and then
8 provide kind of a cost estimate based on what I
9 think the length of the depositions to be. And so,
10 like, each -- I've got to justify the ultimate
11 dollar amount that I've asked for. But to my
12 knowledge, there's not necessarily, like, a cap on
13 what that dollar amount might be.

14 Was that responsive?

15 **Q. It was.**

16 A. Okay.

17 **Q. And forgive me if you've already answered**
18 **this question --**

19 A. Okay.

20 **Q. I'm a little bit confused whether or not**
21 **we've answered this question or not --**

22 A. Okay.

23 **Q. -- but have you ever denied an attorney**
24 **that you supervise funds for a deposition?**

25 A. I suspect that I probably have at some

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1 point in time, but I -- as I'm sitting here now, I
2 certainly could not cite to you a case or the
3 rationale. I -- it would be -- probably, it
4 would -- it would have been a very rare instance.

5 **Q. Do you have a sense for how many of the**
6 **depositions that you have taken or any of the**
7 **attorneys that you supervise have taken that have**
8 **been out of state?**

9 A. Can I answer the first part?

10 **Q. Sure.**

11 A. Okay. In my 15 years, I can think of a
12 case that caused me to go to Florida for
13 depositions. I can think of -- and it was a child
14 witness on a child sex allegation, so, like, a phone
15 deposition I didn't think would work well. I can
16 think of another case where I went to Arkansas and
17 Colorado for depositions. The Colorado deposition,
18 likewise, an alleged victim of a child sex offense
19 or a -- or something of that kind. In terms of me
20 personally going out of state for depositions, those
21 are the only two times I can think of.

22 The other part of your question was
23 lawyers in my office, so let me kind of wrap my head
24 around that for a second, if I can, please. I know
25 one of my lawyers recently went to Texas for a

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1 deposition. On another case, Wisconsin or
2 Michigan -- some place north and some place cold --
3 and those are the only ones I can think of off of
4 the top of my head.

5 **Q. And with those, is there -- is the**
6 **procedure similar, or are there some different**
7 **procedures for how one goes about getting an**
8 **out-of-state deposition approved?**

9 A. For me, my procedure is, the lawyer better
10 have a really good reason to spend the time and the
11 money. That's not a formal written policy, but
12 that's a -- but that's a -- you better really want
13 it. And so, typically, what it would involve is me
14 talking to the lawyer beforehand and having them
15 justify it to me before I click the button that says
16 approved.

17 **Q. How about funds for experts? Have you**
18 **ever been personally denied a request to utilize**
19 **expert testimony or consult an expert at your time**
20 **at the Missouri State Public Defender System?**

21 A. I can't think of a situation in which I
22 had been -- in which I had -- in which it had been
23 told to me, Look, no, that's totally off limits.
24 There have been times where I've been told, No, you
25 need to find a cheaper expert or someone closer so

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<p style="text-align: right;">Page 217</p> <p>1 there's less travel, or instead of paying someone to 2 do this computer forensic stuff, how about we have 3 our IT department look at it? But, generally, one 4 way or the other, I was able to get whatever 5 information needed -- I cannot think of a situation 6 in which there was an outright refusal.</p> <p>7 Q. Can you think of a situation where you as 8 a supervisor denied a request for expert testimony 9 from an employee that you supervised?</p> <p>10 A. I cannot think of such a situation.</p> <p>11 Q. Are there any written policies or 12 procedures governing how much money can be spent 13 upon a particular expert, or is it all 14 discretionary?</p> <p>15 A. There is -- I don't know if it's written 16 down anywhere or not. It may be in an e-mail or it 17 may be -- I don't know if it's a policy or 18 something. I don't know. But there's a preference 19 for if you take two experts of comparable quality, 20 pick the cheaper one. You know, likewise, for 21 example, in the deposition context, the expectation 22 is that we use the state contract to go with the low 23 cost provider.</p> <p>24 And now I've forgotten your initial 25 question. I'm sorry, sir.</p>	<p style="text-align: right;">Page 219</p> <p>1 year or so?</p> <p>2 A. I'd have to look at some numbers. So let 3 me -- I'd have to give you a wild ballpark.</p> <p>4 Q. A wild ballpark is fine.</p> <p>5 A. About ten, give or take. And it sort of 6 fluctuated over time. In years past, sometimes we 7 try more, sometimes we try less; it just -- it tends 8 to -- for the last 12 months, ten is a reasonable 9 guess.</p> <p>10 Q. And when there is a trial, is it -- if 11 there are no policies or procedures, is it the 12 custom of your district to send multiple assistant 13 public defenders to that trial? Said another way, 14 do you send a number of second chairs or third 15 chairs, or how do you go about assigning coverage 16 for trials?</p> <p>17 A. There will be a second chair. Sometimes 18 it's an active second chair that -- and I'm talking 19 jury trials; I'm not talking bench trials. On a 20 jury trial, there will be a second chair. Sometimes 21 it's an active second chair who takes parts of the 22 cases. You know, I'm going to cross these 23 witnesses, I'll direct this witness, I'll do 24 closing, you do open -- you know, something along 25 those lines. Other times it's a passive second</p>
<p style="text-align: right;">Page 218</p> <p>1 Q. No worries. I think I forgot my initial 2 question as well.</p> <p>3 Well, the initial question was if you had 4 ever denied expert testimony -- the funds for expert 5 testimony to an attorney that you supervise, I 6 think, was along the lines.</p> <p>7 A. I don't think -- I cannot think of a time 8 in which I had. Oh, and then I think you asked me 9 about policy.</p> <p>10 Q. Oh. Whether there was any policy or 11 procedure limiting how much may can be spent on a 12 particular expert.</p> <p>13 A. Correct.</p> <p>14 Q. Yeah.</p> <p>15 A. I'm not aware of a policy saying X is the 16 cutoff.</p> <p>17 Q. Sure.</p> <p>18 A. But sort of, again, the expectation is 19 that we go with the cheapest -- with the experience 20 and expertise necessary.</p> <p>21 Q. Turning to trial --</p> <p>22 A. Yes.</p> <p>23 Q. -- generally, for a second. Do you have a 24 sense of how many trials your district tried to 25 completion, if you will, within the past calendar</p>	<p style="text-align: right;">Page 220</p> <p>1 chair whose basic role is to take notes, be a 2 gopher, you know, sometimes serve as a buffer 3 between the client and the lawyer trying the case, 4 just kind of depends. There is never any sort of -- 5 right now there is not any sort of third chair 6 unless there's, like, an unpaid intern, so -- trying 7 to get some experience or something like that. But, 8 usually -- you know, frankly, in the Cole County 9 courthouse, the courtrooms are set up so there's not 10 room for that extra person at the table anyway, 11 so ...</p> <p>12 Long answer to a short question. I 13 apologize.</p> <p>14 Q. No worries.</p> <p>15 A. There's always going to be some sort of 16 second chair.</p> <p>17 Q. Turning to plea deals.</p> <p>18 A. Yes.</p> <p>19 Q. What is the earliest in your district an 20 assistant public defender can counsel their client 21 to accept a plea deal?</p> <p>22 A. I have no hard rule on that, and so -- you 23 know, hypothetically speaking, the lawyer can plead 24 the client as quickly as the client wants that to 25 happen, provided that the lawyer has done what due</p>

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1 diligence is reasonable in the context of the case.
 2 You know, so -- I mean, hypothetically speaking, in
 3 terms of my policies and my expectation, if a lawyer
 4 gets in on a case on Monday, has full discovery on
 5 Tuesday, meets with the client in jail on Tuesday or
 6 at the office on Tuesday, does whatever works needs
 7 to happen, and the client is adamant that may want
 8 to plead guilty in the near future, as long as the
 9 lawyer has met with the client, done what the lawyer
 10 needs to do, in terms of case preparation, or if the
 11 client says, Look, we've talked about doing XYZ,
 12 123, I don't want you to do XYZ, 123, I want to go
 13 ahead and do this today. You know, I'm not going to
 14 criticize the lawyer, provided that the client is
 15 fully counseled, sort of, as to the consequences of
 16 the thing.

17 At some point when you get to a segue, if
 18 I could take a break, that would be great.

19 MR. RAMSEY: Let's go off the record.

20 THE WITNESS: Okay.

21 VIDEOGRAPHER: The time is 3:35 p.m., and
 22 we're off the record.

23 (A recess was taken.)

24 VIDEOGRAPHER: The time is 3:45 p.m., and
 25 we're back on the record.

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1 legal situation. Invariably, there's going to be
 2 follow-up activity that should happen, and what that
 3 follow-up activity is going to be is just going to
 4 vary dramatically depending on, you know, are we
 5 talking about a probation violation where the
 6 allegation is that the client failed to pay, you
 7 know, restitution or is it a -- the client has been
 8 kicked out of treatment or is it going to be, you
 9 know, some other violation. There may be witnesses
 10 that may need to be interviewed. There is --
 11 certainly, the bond should be addressed as quickly
 12 as humanly possible, you know, and kind of -- those
 13 strike me as sort of, like, the bare minimum. What
 14 exists beyond that would just depend on the nature
 15 of the case and the client situation.

16 **Q. Turning to timekeeping, I understood your**
 17 **testimony to be that at one point in time -- at**
 18 **least one point in time, there was a period where**
 19 **you and your district that you were working in were**
 20 **tracking time by five-minute increments or by task,**
 21 **if you will. When was the last time you can**
 22 **remember keeping track of time like that?**

23 A. At some point when I was in the Area 19
 24 office. We were tracking time when I came to that
 25 office. At some point in my tenure there, we

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1 **Q. (By Mr. Ramsey) Turning to probation**
 2 **revocation proceedings. I believe the RubinBrown**
 3 **report gives some amount of time that it thinks is**
 4 **necessary to complete those. I don't know if it's**
 5 **nine hours or however many hours there are. In your**
 6 **experience, what needs to happen, specifically, to**
 7 **adequately prepare for a probation revocation**
 8 **hearing?**

9 A. The lawyer needs to review not just
 10 incident probation violation reports but other
 11 historical probation violation reports. If there's
 12 a sentencing assessment report, the lawyer needs to
 13 review that as well. In addition -- and have copies
 14 and be familiar with the things. In addition, the
 15 lawyer needs to meet with the client. In my office,
 16 there's an intake form that we expect every lawyer
 17 to complete with every client, ask basic questions
 18 about their personal situation, about their legal
 19 situation, citizenship status, alcohol drug issues,
 20 physical mental health issues, things of that kind.
 21 And that is rock bottom, bare minimum, but depending
 22 on the issues that exist with regard to the
 23 probation violation, how it is the client is alleged
 24 to have violated probation and what the issues are
 25 in the client's sort of personal life and their

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1 stopped. It would have been, if memory serves,
 2 before January 1, 2017, but when between January 1,
 3 2017 and September 2014, somewhere in there.

4 **Q. And when you were tracking time -- well,**
 5 **strike that.**

6 **Currently, is the extent of your**
 7 **timekeeping tracking, if you will, the I work ten**
 8 **hours per day or I work 12 hours per day?**

9 A. Yes.

10 **Q. At any point during the actual tracking of**
 11 **time in the five-minute increments was there ever a**
 12 **person assigned to manage or oversee that**
 13 **timekeeping process?**

14 A. The district defender in each office.

15 **Q. And so to the extent that you were tasked**
 16 **with maintaining or overseeing that task, were you**
 17 **ever provided any additional training in**
 18 **timekeeping?**

19 A. Yes.

20 **Q. Where did that training come from?**

21 A. It -- there was -- and I -- I can't recall
 22 if it was in the first time that we time logged or
 23 the second time that we time logged, but somewhere
 24 in there -- it was at our annual management meeting,
 25 there was a presentation on that topic. There may

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1 have been additional presentations on that topic.
 2 In addition, there is a database -- we call it the
 3 MSPD help database. It provides instructions on how
 4 to do a million and one different things, open a
 5 case, close a case, but there was also a number of
 6 tutorials on how to do time logging.

7 **Q. Switching gears a bit, when you were**
 8 **testifying concerning the nonsupport matters,**
 9 **whether it's being held in contempt or was a**
 10 **misdemeanor or -- I don't know if you mentioned that**
 11 **it could also be a felony, but in that scheme of**
 12 **conversation and testimony, I believe you testified**
 13 **that the judge had ultimately said that she was**
 14 **going to stop appointing your district to represent**
 15 **in those matters. Am I understanding that**
 16 **correctly?**

17 A. Judge Joyce told us we are not to be
 18 entering on criminal nonsupport cases anymore until
 19 such time as our caseload situation resolves.

20 **Q. Could you help me understand, I guess, the**
 21 **difference between you all -- someone applying to**
 22 **your office independently, being directed to by the**
 23 **court, and the court directing you not to accept any**
 24 **particular type of case? I'm trying to understand,**
 25 **I guess, perhaps, your understanding of the judge's**

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1 **the cases that have been continued for one reason or**
 2 **another for years on end, do you have a custom --**
 3 **and I presume -- I'm starting to assume that there's**
 4 **not a policy or procedure, but do you have some type**
 5 **of a custom of first-in, first-out or some way to**
 6 **get the cases that have been on your dockets longer**
 7 **out the door faster?**

8 A. I don't have a policy in that regard. I
 9 mean, you know, generally, the longer the case is on
 10 the judge's docket, the more the judge is going to
 11 push to resolve that case.

12 **Q. Is it your understanding that you were the**
 13 **first -- you were either the first or one of the**
 14 **first district defenders to start exercising control**
 15 **or asking for different mechanisms to control your**
 16 **caseload and workload well before the Hinkebein**
 17 **decision, in terms of -- I think you had mentioned**
 18 **it was January 1 of this year that you started**
 19 **really, I guess, pushing the envelope, so to speak.**

20 A. Yes.

21 **Q. And in your decision to do so, why did you**
 22 **decide to proceed as you did, as opposed to -- I**
 23 **don't know what the other district defenders were**
 24 **doing, and I'm not asking you to testify on their**
 25 **behalf, but what led you to act, I guess, is my**

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1 **power to tell you and your district not to accept**
 2 **those cases.**

3 A. So under the Waters decision, the trial
 4 courts have sort of inherit authority to control or
 5 manage my caseload in a way that I cannot, and so
 6 when Judge Joyce told me, Hey, you know, you guys
 7 don't take any more criminal nonsupport cases until
 8 all of this gets fixed, I sort of took that to be
 9 the judge -- you know, she didn't specify the Waters
 10 name, but I kind of took that to be her exercising
 11 her inherent authority to tell me to stay out of
 12 that class of cases.

13 **Q. And sitting here today, is it your**
 14 **understanding that if someone applied that was in**
 15 **that realm of cases and you accepted that, that**
 16 **would be going against that order or that directive**
 17 **from the judge?**

18 A. Correct.

19 **Q. Okay.**

20 A. What we would do is we would file a denial
 21 for public defender services saying we've been told
 22 not to take criminal nonsupport cases.

23 **Q. I'm going to start jumping all over the**
 24 **place a little bit, and I apologize for that.**

25 **Concerning the caseloads, specifically,**

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1 **question.**

2 A. Well, I mean, essentially, what -- sort of
 3 the things that I articulated earlier --

4 **Q. As in your attorneys coming to you in a**
 5 **conservative effort?**

6 A. That was the immediate spark.

7 **Q. Uh-huh.**

8 A. Also, I had done everything
 9 administratively I could think of to make our office
 10 more efficient. And, sort of, in a number of
 11 different ways, I had hit my boss up for money a
 12 couple of different times, a couple of different
 13 ways, and she told me pretty clearly that the well
 14 was dry, and we had been, you know, sort of -- there
 15 was that September 2016 meeting where, basically,
 16 senior management said, Hey, we're now shifting
 17 gears, and we're going to allow the local offices to
 18 kind of chart your own course, and then all of my
 19 lawyers came to me and said, You better find a
 20 different course. So there was kind of a confluence
 21 of things.

22 **Q. Is it fair to characterize your testimony**
 23 **as after you started to work with the criminal**
 24 **justice system, whether that be the judges or the**
 25 **prosecutors, that you saw marked improvement in that**

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<p style="text-align: right;">Page 229</p> <p>1 time, in terms of caseload and workload concerns, 2 whether that was from January 1 up until the 3 Hinkebein decision -- or whatever span we're talking 4 about. Is that fair to characterize that while you 5 were working together with the system, your caseload 6 improved? 7 A. I don't know that I would characterize it 8 that way. If you go from 2014 to December 29, 2016, 9 you know, the things that I was doing -- I was 10 asking for help, you know, routinely from the 11 judges, but, you know, as you can see from the 12 e-mail thread, you know, the help was, frankly, very 13 small. Well, the statute changed so, I won't put 14 you in this small case type anymore. You know, 15 really, most of the things that I was doing between 16 2014 and 2016 was trying to run my ship as 17 efficiently and cleanly as possible. And when it 18 was clear that I couldn't, you know, make it any 19 leaner, more efficient, couldn't be any stricter on 20 applications, that was sort of when I told the 21 courts, Hey, look, this is what we've got to do. 22 Q. Turning generally to the Chapter 600.063 23 conferences and the motions that you filed, did you 24 receive broad authority to file those motions 25 whenever you felt you had to, or have you asked for</p>	<p style="text-align: right;">Page 231</p> <p>1 correct? 2 A. Yes. 3 Q. And so on there, could you tell me how 4 cases initiated or defined on that graph? 5 A. Yes. When -- in any case management 6 software, when staff goes through to 7 administratively click the buttons to create a case 8 and open it, that, then, as I understand, will -- it 9 is sort of what triggers that case is initiated. 10 Q. Two steps back. Did you have any hand in 11 creating this particular graph? 12 A. No. 13 Q. And are you familiar with any of the, for 14 lack of a better word, metadata that's underlying 15 the graph, if you will? 16 A. You lost me, I apologize. 17 Q. Are you -- do you understand, I guess, all 18 of the various components of this graph? 19 A. I don't understand -- I don't -- well -- 20 it's been a while since I got down in the weeds of 21 the RubinBrown thing. I understand some of it, 22 probably not all of it. 23 Q. Okay. 24 MR. RAMSEY: I think that's going to 25 conclude my line of questioning.</p>
<p style="text-align: right;">Page 230</p> <p>1 permission from upper management every time you were 2 going to file one of those motions? 3 A. I had received authority, and then the 4 content of the conversation, I understood that to 5 be, pursue it as you need to. I did not understand 6 it to be, But call me every time before you file an 7 individual motion. I'm pretty sure my boss doesn't 8 want that. 9 Q. Would you turn with me to Exhibit 21 on 10 Plaintiff's Exhibit 21. 11 A. Certainly. Yes. 12 Q. Now, the various typos and other issues 13 have been noted in this document previously. Is 14 that your understand that from earlier testimony? 15 A. Yes. 16 Q. So you've never seen a document that quite 17 looks like this -- 18 A. I would have -- 19 Q. -- in terms of -- well, you've never seen 20 this exact document with the typos noted. 21 A. I would have seen it in a format that did 22 not have the typos or the formatting issues or 23 whatever you call them. 24 Q. And with that, you were referred to this 25 last page, Bates stamp 38976, I believe; is that</p>	<p style="text-align: right;">Page 232</p> <p>1 MS. SHIPMA: I have a few questions, Just. 2 CROSS-EXAMINATION 3 BY MS. SHIPMA: 4 Q. I think I'll go backwards, just to make it 5 interesting. 6 Mr. Ramsey asked you about kind of the 7 numbers that you were using to determine when your 8 attorneys have a reasonable caseload, and you talked 9 about how that varied on the case type. Are there 10 other factors that go into that determination of 11 what an individual attorney can carry as a 12 reasonable caseload? 13 A. Their experience level as well. You know, 14 a lawyer with 30 days of experience could not carry 15 the same caseload as a lawyer whose got eight years 16 of experience in criminal defense, all else being 17 equal. And when I say -- that lawyer with 30 days 18 of experience would need a need a smaller caseload, 19 in terms of volume but also in complexity. 20 Q. Do you talk to the attorneys about what 21 they feel they can ethically handle? 22 A. Yes. 23 Q. And do you take that into consideration 24 when you're deciding whether they're available to 25 take more cases?</p>

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<p style="text-align: right;">Page 233</p> <p>1 A. Yes.</p> <p>2 Q. You talked about there was a time in 2012</p> <p>3 when there was an administrative rule in effect and</p> <p>4 you felt like toward the end of, sort of, the</p> <p>5 six-month period, you were starting, I think you</p> <p>6 said, to see the light at the end of the tunnel. I</p> <p>7 think that was maybe the --</p> <p>8 A. Yes.</p> <p>9 Q. -- phrase that you used. What caused that</p> <p>10 six-month period to end, if you know?</p> <p>11 A. What I was told was that members of the</p> <p>12 legislature had communicated to our director,</p> <p>13 You-all need to pull the plug on this, or we're</p> <p>14 going to privatize the system. And so -- and there</p> <p>15 were a whole lot of other things that were taking</p> <p>16 place at the same time. Bob McCullough was the</p> <p>17 prosecutor in St. Louis County; he was going to sue.</p> <p>18 There was an audit report criticizing alliance on</p> <p>19 the National Advisory Counsel standard or guideline.</p> <p>20 And so as I understand, senior management kind of,</p> <p>21 when faced with this sort of battery of problems,</p> <p>22 decided that they were no longer going to implement</p> <p>23 the administrative rule or the -- you know, the</p> <p>24 caseload metric or whatever you want to call it at</p> <p>25 that point in time.</p>	<p style="text-align: right;">Page 235</p> <p>1 sometimes they just ask for more time to hire a</p> <p>2 lawyer, other times they go pro se.</p> <p>3 Q. Did you ever find that applicants you had</p> <p>4 denied became PD clients anyway?</p> <p>5 A. Yes.</p> <p>6 Q. And how would that happen?</p> <p>7 A. It could be because down the road they</p> <p>8 would reapply and convince us that their situation</p> <p>9 at the time of the new application was such that we</p> <p>10 should be entering. They had been working, now they</p> <p>11 lost their job, for example, or if they appealed our</p> <p>12 denial to the court and the court ordered us to</p> <p>13 represent, then we would do so.</p> <p>14 Q. Did you ever experience a situation where</p> <p>15 there wasn't an appeal but the defendant just</p> <p>16 repeatedly appeared without counsel and the judge</p> <p>17 would appoint us in that situation?</p> <p>18 A. Yes.</p> <p>19 Q. Is it typical for the attorneys in your</p> <p>20 office to work weekends?</p> <p>21 A. It certainly happens, yes.</p> <p>22 Q. So while they may not be assigned a 24/7</p> <p>23 work assignment, there is work occurring beyond the</p> <p>24 normal nine to five, Monday through Friday, as far</p> <p>25 as the attorneys in the public defender system go?</p>
<p style="text-align: right;">Page 234</p> <p>1 Q. Is that administrative rule still in</p> <p>2 existence, if you know?</p> <p>3 A. I can't recall.</p> <p>4 Q. Okay.</p> <p>5 A. We've had a couple of them. Some of them</p> <p>6 have been struck down.</p> <p>7 Q. Let's go back to your process for</p> <p>8 determining indigency?</p> <p>9 A. Yes.</p> <p>10 Q. And let's talk about prior to this year,</p> <p>11 when you've been doing this different experiment</p> <p>12 with the caseloads.</p> <p>13 What would happen when you deny an</p> <p>14 applicant's request for public defender services?</p> <p>15 A. Prior to January 1, the only reason we</p> <p>16 would deny an applicant would be because it was an</p> <p>17 ineligible case or they did not meet the financial</p> <p>18 criteria for a public defender. When we were going</p> <p>19 to deny an applicant, there's a written denial that</p> <p>20 we would file setting out the reason or reasons, as</p> <p>21 the case may be. We would mail a copy of that</p> <p>22 denial to that applicant, file the denial with the</p> <p>23 court, and that would be that. If the applicant</p> <p>24 chose to appeal that decision to the court,</p> <p>25 certainly, they could. Sometimes people do,</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Absolutely.</p> <p>2 Q. Would you say that happens rarely?</p> <p>3 A. Consistently, my lawyers are working</p> <p>4 overtime.</p> <p>5 Q. And not really true overtime because they</p> <p>6 are exempt under the Fair Labor Standards Act; is</p> <p>7 that correct.</p> <p>8 A. Correct.</p> <p>9 Q. Sorry. My labor law -- employment law</p> <p>10 attorney.</p> <p>11 A. We don't pay them for the time that they</p> <p>12 work in excess of the 40 hours a week that they</p> <p>13 perpetually work.</p> <p>14 Q. And I believe Mr. Ramsey also asked you</p> <p>15 about the number of plea deals that come through the</p> <p>16 office.</p> <p>17 A. Yes.</p> <p>18 Q. Are most of the cases pled out?</p> <p>19 A. Yes.</p> <p>20 Q. So you would have almost as many plea</p> <p>21 deals coming into the office as the number of cases</p> <p>22 that are coming into the office; is that correct?</p> <p>23 A. Generally, in all but the rarest of cases,</p> <p>24 there is a plea offer.</p> <p>25 Q. And so there would be an increase in the</p>

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<p style="text-align: right;">Page 237</p> <p>1 number of plea deals coming into the office based on 2 the number of the cases that are coming into the 3 office; is that correct? 4 A. Right. If our caseload rises, so would 5 our incoming plea offers. 6 Q. I want to take you back to Exhibit 21 just 7 for a moment. And I know that you just testified 8 that you did not participate in any way in the 9 preparation of the chart that's shown on 10 Bates 38976, but you did testify about some of it 11 earlier, and I just want to point out -- or I just 12 want to make sure I understand one point. 13 You were talking earlier about there being 14 33 offices in the Missouri State Public Defender 15 System. 16 A. In the trial division. 17 Q. The trial division, that's correct. So 18 these first lines deal with the trial division only; 19 is that correct? 20 A. Correct. 21 Q. There are other divisions, as well, within 22 MSPD? 23 A. Correct. 24 Q. And some of those are shown on here, the 25 appellant PCR division; is that correct?</p>	<p style="text-align: right;">Page 239</p> <p>1 have a lawyer experienced in criminal law like you, 2 or just any old lawyer will do? 3 A. Can you repeat that? 4 Q. Yeah. Given a reasonable caseload -- 5 A. Okay. 6 Q. -- is it better for a criminal defendant 7 to have someone who is experienced in criminal law 8 like you, or just any old lawyer from the public 9 service commission or the department of natural 10 resources? 11 A. Definitely better for the accused to have 12 a lawyer who is trained in criminal law and 13 proficient, as compared to some other random lawyer 14 who doesn't know anything about it. 15 Q. Okay. 16 MS. SHIPMA: That's all of the questions I 17 have. 18 REDIRECT EXAMINATION 19 BY MR. SCHERZER: 20 Q. I have just a few. 21 A. Absolutely. 22 Q. Do you need a break? 23 A. No. 24 Q. Okay. It won't be long. 25 Just -- I'll pick up right where</p>
<p style="text-align: right;">Page 238</p> <p>1 A. Correct. 2 Q. And I think you also mentioned earlier 3 capital division? 4 A. Correct. 5 Q. And a CD -- Civil -- 6 A. Commitment Defense Unit. 7 Q. -- Commitment Defense Unit. Thank you. 8 Yes. That's another division; is that correct? 9 A. Yes. 10 Q. In your opinion, have you -- has the 11 quality of representation changed for the clients of 12 your attorneys since you've implemented this 13 caseload control -- 14 A. Yes. 15 Q. -- in 2017? 16 A. Yes. 17 Q. And how has that quality changed? 18 A. My lawyers have more time to talk to the 19 clients, more time to do the legal research, to file 20 the motions, to do the depositions. I think that 21 the quality of the legal services they are providing 22 has increased. 23 Q. Okay. Given an appropriate caseload, an 24 attorney with an appropriate caseload, in your 25 opinion, is it better for criminal defendants to</p>	<p style="text-align: right;">Page 240</p> <p>1 Ms. Shipma left off. 2 In additional -- of course, given a 3 reasonable caseload, would you also say -- and you 4 said -- assuming that it's better for someone to 5 have -- it's better for a criminal defendant to have 6 an attorney who is experienced in criminal law, is 7 it also better for the criminal defendant to have an 8 attorney who works with other criminal lawyers and 9 is supervised by someone who is experienced in 10 criminal law? 11 A. Yes. 12 Q. And not only experienced in criminal law 13 but also has training in criminal law? 14 A. Yes. 15 Q. And has someone who they -- in their 16 office, colleagues and supervisors, who they can ask 17 for advice and support based on their experience in 18 criminal law? 19 A. Yes. 20 Q. And if you actually had resources for 21 investigators and experts and the like, someone who 22 has access to investigators and experts and, 23 perhaps, social workers as well. 24 A. Yes. 25 Q. Okay. And -- okay. Move on from that.</p>

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<p style="text-align: right;">Page 241</p> <p>1 Is it fair to say -- so you've talked</p> <p>2 about two periods where there's strict caseload</p> <p>3 limits; one for this six-month period in 2012 and</p> <p>4 one now -- you've sort of created this, fair to say,</p> <p>5 sort of, pilot project in your office where you're</p> <p>6 causing yourself to be ineffective in a -- in an</p> <p>7 effort to try to save your line attorneys.</p> <p>8 A. Correct.</p> <p>9 Q. Is it fair to say, with those strict</p> <p>10 caseloads limits in place, you and your attorneys</p> <p>11 are or would be able to provide something at least</p> <p>12 approaching effective representation for your</p> <p>13 criminal defendants?</p> <p>14 A. Yes.</p> <p>15 Q. And without those caseload -- strict</p> <p>16 caseload limits, as was the case for your attorneys</p> <p>17 in, say, 2016 and for you in 2017, you aren't</p> <p>18 able -- you and your attorneys aren't able to</p> <p>19 provide that effective representation?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. You talked about 1,788 cases, is</p> <p>22 that right, that you have open in your --</p> <p>23 A. Yes.</p> <p>24 Q. Okay. That you have opened in Area 19?</p> <p>25 A. No. That we opened thus far in calendar,</p>	<p style="text-align: right;">Page 243</p> <p>1 Q. You're jumping ahead, so --</p> <p>2 A. Sorry.</p> <p>3 Q. No, no, no. That's perfect.</p> <p>4 So in other words, you don't even ask for</p> <p>5 depositions in many of the cases you might</p> <p>6 otherwise -- you don't even -- you wouldn't</p> <p>7 necessarily have to ask, but -- because you're the</p> <p>8 district defender, but you don't even consider doing</p> <p>9 depositions in many of the cases you would like to</p> <p>10 because you don't possibly -- you couldn't possibly</p> <p>11 have the time to do so; is that right?</p> <p>12 A. Agreed. I would love to do more</p> <p>13 depositions than what I'm actually doing, and I</p> <p>14 think there are cases in which it would be helpful.</p> <p>15 It's a time limitation, not a money limitation.</p> <p>16 Q. And is that the same -- it sounds like you</p> <p>17 were saying that's the same for your line attorneys</p> <p>18 as well. There are numerous cases that they would</p> <p>19 like to be doing depositions in but do not, simply</p> <p>20 because they don't have the time?</p> <p>21 A. They may have more time now, but at least</p> <p>22 historically, that has absolutely been a limitation.</p> <p>23 Q. And they might have time now because of</p> <p>24 the strict caseload limits that you've imposed?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 242</p> <p>1 not open now.</p> <p>2 Q. Do you know how many are open now?</p> <p>3 A. About 750.</p> <p>4 Q. 750. Okay. Just a few more questions.</p> <p>5 Mr. Ramsey was asking you about</p> <p>6 depositions and whether those were denied -- whether</p> <p>7 those had been denied, and you talked about some</p> <p>8 examples where they were. Could one of the reasons</p> <p>9 for denying a deposition -- that you were denied a</p> <p>10 deposition or that your -- Ellen Blau or the other</p> <p>11 supervisors in the central were denying a deposition</p> <p>12 be time, as well as money? In other words, that</p> <p>13 you -- it's not necessarily the cost of the</p> <p>14 deposition but time you're taking away from -- you</p> <p>15 or your attorneys are taking away from other cases?</p> <p>16 A. I've never had that offered as a reason</p> <p>17 for denying the deposition. And, you know,</p> <p>18 generally, my lawyers and myself self-screen that</p> <p>19 out. I mean, I don't have time to waste. I'm not</p> <p>20 going to ask for a deposition that I think is going</p> <p>21 to be fruitless, and my lawyers are in the same</p> <p>22 both.</p> <p>23 Q. Got it. Okay. That was getting to</p> <p>24 exactly what I was asking.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. All right. And because, of course, any</p> <p>2 time spent taking -- a day spent taking a deposition</p> <p>3 is an entire day away from the other 212 cases that</p> <p>4 you have or the other numerous cases that</p> <p>5 your line attorneys have?</p> <p>6 A. Correct.</p> <p>7 Q. And for experts, it -- is -- could part of</p> <p>8 the reason that experts are used less frequently be</p> <p>9 a similar reason, that it takes lots of time to find</p> <p>10 the right expert, to talk to that expert, to gather</p> <p>11 the resources needed to have a fruitful expert</p> <p>12 report, and, thus, that's also time that would</p> <p>13 ideally be available to you and your attorneys but</p> <p>14 isn't, and, therefore, you don't make expert</p> <p>15 requests?</p> <p>16 A. Absolutely. And the youthfulness and</p> <p>17 general inexperience of the lawyers in my office.</p> <p>18 If they don't know to ask for an expert, they won't</p> <p>19 ask for an expert. And I won't know that the need</p> <p>20 is there, necessarily.</p> <p>21 Q. So is it fair to say that your office</p> <p>22 should be -- in an ideal world, should be taking</p> <p>23 depositions in many more cases than it currently</p> <p>24 does?</p> <p>25 A. I think so. Certainly on my cases now,</p>

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<p style="text-align: right;">Page 245</p> <p>1 absolutely, yes.</p> <p>2 Q. And also fair to say that your office</p> <p>3 should be use experts much more frequently than it</p> <p>4 does?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I just have two more questions.</p> <p>7 Just going back to the five people who</p> <p>8 left your office in 2017, two for family reasons,</p> <p>9 two quit for caseload and money reasons, and then</p> <p>10 you mentioned one retired. Was one -- was part of</p> <p>11 the reason that he or she retired for the same</p> <p>12 caseload and money reasons, or was he just retiring?</p> <p>13 A. What he articulated to me was that he sat</p> <p>14 down and did the math, and he could get paid the</p> <p>15 same to work or not work, and so he said, I'll take</p> <p>16 the same amount of money to not work, and, you know,</p> <p>17 if I do some private stuff on the side, I'll be</p> <p>18 money ahead for less work.</p> <p>19 Q. Got it. And did he express at that time</p> <p>20 any frustration with the caseload or his other</p> <p>21 recent experience with -- as a public defender at</p> <p>22 the time he retired?</p> <p>23 A. He did not express.</p> <p>24 Q. Okay. Just one last question about the</p> <p>25 criminal nonsupport cases, those -- you estimated</p>	<p style="text-align: right;">Page 247</p> <p>1 A. Correct.</p> <p>2 MR. SCHERZER: And that's all of the</p> <p>3 questions I have.</p> <p>4 VIDEOGRAPHER: The time is 4:21 p.m., and</p> <p>5 we're off the record.</p> <p>6 (The deposition concluded at 4:21 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 246</p> <p>1 are there about 50 criminal nonsupport cases that</p> <p>2 might come up over the course of the year. The</p> <p>3 judge's decision to say that you cannot or should</p> <p>4 not enter appearances in any of those cases, has</p> <p>5 that significantly reduced, in any meaningful way,</p> <p>6 your -- the caseload of your office?</p> <p>7 A. Well, I mean, at least for my individual</p> <p>8 assistant public defenders -- I mean, no, because if</p> <p>9 they couldn't have taken those cases, I was not</p> <p>10 going to assign them to them. You know what I mean?</p> <p>11 Q. Uh-huh.</p> <p>12 A. And, you know, in the context of 1,788</p> <p>13 cases a year, you know, 50 is -- frankly, it's sort</p> <p>14 of a drop in the bucket, at least in terms of the</p> <p>15 bigger impact, you know, kind of office wide.</p> <p>16 Q. Especially, presumably, because the point</p> <p>17 of these 50 is there should be 50 of the easiest,</p> <p>18 shortest cases they have. It's not 50 murder cases</p> <p>19 that are being taken away or 50 A, B felony, it's --</p> <p>20 A. Right. You're talking about either</p> <p>21 misdemeanors or probation violations or low-level</p> <p>22 felonies.</p> <p>23 Q. Not to say they're not serious, but,</p> <p>24 presumably, that you would be spending less time on</p> <p>25 them than you would be on a murder case.</p>	<p style="text-align: right;">Page 248</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Lisa Ballalatak, a Certified Court</p> <p>4 Reporter for the State of Missouri, do hereby certify</p> <p>5 that the witness whose testimony appears in the</p> <p>6 foregoing deposition was duly sworn by me; the</p> <p>7 testimony of said witness was taken by me to the best</p> <p>8 of my ability and thereafter reduced to typewriting</p> <p>9 under my direction; that I am neither counsel for,</p> <p>10 related to, nor employed by any of the parties to the</p> <p>11 action in which this deposition was taken, and further</p> <p>12 that I am not a relative or employee of any attorney</p> <p>13 or counsel employed by the parties thereto, nor</p> <p>14 financially or otherwise interested in the outcome of</p> <p>15 the action.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 Lisa Ballalatak</p> <p>21 Missouri Supreme Court</p> <p>22 Certified Court Reporter</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right; margin-bottom: 10px;">Page 249</p> <p>1 ALARIS LITIGATION SERVICES</p> <p>2 December 28, 2017</p> <p>3 MS. JACQUELINE D. SHIPMA</p> <p>4 MISSOURI STATE PUBLIC DEFENDER SYSTEM</p> <p>5 1000 W Nifong Boulevard, Suite 100</p> <p>6 Columbia, Missouri 65203</p> <p>7 IN RE: SHONDEL CHURCH, et al. v. STATE OF</p> <p>8 MISSOURI, et al.</p> <p>9 Dear Ms. Shipma,</p> <p>10 Please find enclosed your copies of the deposition of</p> <p>11 JUSTIN CARVER taken on December 11, 2017 in the</p> <p>12 above-referenced case. Also enclosed is the original</p> <p>13 signature page and errata sheets.</p> <p>14 Please have the witness read your copy of the</p> <p>15 transcript, indicate any changes and/or corrections</p> <p>16 desired on the errata sheets, and sign the signature</p> <p>17 page before a notary public.</p> <p>18 Please return the errata sheets and notarized</p> <p>19 signature page within 30 days to our office at 711 N</p> <p>20 11th Street, St. Louis, MO 63101 for filing.</p> <p>21 Sincerely,</p> <p>22 </p> <p>23 LISA BALLALATAK, CCR</p> <p>24 </p> <p>25 39564</p>	<p style="text-align: right; margin-bottom: 10px;">Page 251</p> <p>1 STATE OF _____)</p> <p>2 </p> <p>3 COUNTY OF _____)</p> <p>4 </p> <p>5 I, JUSTIN CARVER, do hereby certify:</p> <p>6 That I have read the foregoing deposition;</p> <p>7 That I have made such changes in form</p> <p>8 and/or substance to the within deposition as might</p> <p>9 be necessary to render the same true and correct;</p> <p>10 That having made such changes thereon, I</p> <p>11 hereby subscribe my name to the deposition.</p> <p>12 I declare under penalty of perjury that the</p> <p>13 foregoing is true and correct.</p> <p>14 Executed this _____ day of _____,</p> <p>15 20____, at _____.</p> <p>16 </p> <p>17 </p> <p>18 </p> <p>19 _____</p> <p>20 JUSTIN CARVER</p> <p>21 </p> <p>22 _____</p> <p>23 NOTARY PUBLIC</p> <p>24 My Commission Expires:</p> <p>25 </p>
<p style="text-align: right; margin-bottom: 10px;">Page 250</p> <p>1 ERRATA SHEET</p> <p>2 Witness Name: JUSTIN CARVER</p> <p>3 Case Name: SHONDEL CHURCH, et al. v. STATE OF</p> <p>4 MISSOURI, et al.</p> <p>5 Date Taken: DECEMBER 11, 2017</p> <p>6 </p> <p>7 Page #_____ Line #_____</p> <p>8 Should read: _____</p> <p>9 Reason for change: _____</p> <p>10 </p> <p>11 Page #_____ Line #_____</p> <p>12 Should read: _____</p> <p>13 Reason for change: _____</p> <p>14 </p> <p>15 Page #_____ Line #_____</p> <p>16 Should read: _____</p> <p>17 Reason for change: _____</p> <p>18 </p> <p>19 Page #_____ Line #_____</p> <p>20 Should read: _____</p> <p>21 Reason for change: _____</p> <p>22 </p> <p>23 Page #_____ Line #_____</p> <p>24 Should read: _____</p> <p>25 Reason for change: _____</p> <p>26 </p> <p>27 Witness Signature: _____</p>	

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A	243:22	121:4 159:8	51:15 97:20,21	Agreed 146:1
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